BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON

RE: The Reserve at Tiffany Park Preliminary Plat	)	**FINAL DECISION UPON RECONSIDERATION**
Preliminary Plat and SEPA Appeals	)	
LUA13-001572, ECF, PP, CAE	)	

I. SUMMARY

A. Alterations to Final Decision Resulting from Reconsideration Requests

A Final Decision was issued on the above captioned matter on January 8, 2015. The Final Decision was subjected to two requests for reconsideration made by the SEPA Appellants and the applicant. This Final Decision Upon Reconsideration incorporates all the changes to the January 8, 2015 Final Decision resulting from the reconsideration requests. The Ruling on Reconsideration Requests, attached to this decision as Attachment C, identifies the basis for all the changes made to the January 8, 2015 Final Decision. None of the changes are significant. The only changes made to the January 8, 2015 Final Decision are those identified in the Ruling on Reconsideration Requests.

B. Summary of Decision

The applicant requests preliminary plat approval for the subdivision of 21.66 acres into single-family residential lots and several critical areas tracts located at the dead end of SE 18th Street and bordered by the Cedar River Pipeline along the southern property boundary and the Mercer Island Pipeline along the eastern property boundary. Two appeals of a mitigated determination of nonsignificance ("MDNS") issued under the Washington State Environmental Policy Act ("SEPA") were consolidated with the review of the preliminary plat. The Tiffany Park Woods Advocacy Group ("TPWAG") filed one of the two SEPA appeals and the applicant submitted the second appeal. The preliminary plat is approved subject to conditions. The TPWAG SEPA appeal is denied. The applicant SEPA appeal is sustained, in part.

TPWAG raised numerous issues in its SEPA appeal regarding the conversion of the 21.66 acre subject property from a community recreational resource to a residential subdivision. The property is entirely undeveloped and is covered with trails, tree forts and other similar structures that reveal years of community use. In its SEPA appeal TPWAG argues that the loss of this long-time recreational use is an environmental impact that should be subject to SEPA review. As detailed in this decision, the fact that the applicant has allowed neighbors to use its property in the past (or worse, the fact that neighbors may have trespassed in the past) does not justify the imposition of any SEPA requirements because the neighbors will lose that privilege as a result of the development. Similarly, the fact that the applicant has chosen to retain the trees on its land in the past and through that choice provided neighbors with an appealing arboreal view does not put the applicant in a position where it must now continue to offer that type of view to neighboring properties. With one exception the applicant proposes development that is aesthetically similar and compatible with surrounding uses. For this reason, there is no legal basis for imposing any further environmental review or mitigation to address aesthetic impacts. The one exception is retaining walls. The applicant proposes numerous retaining walls that will reach heights of up to 21 feet. Retaining walls of this height are not present in the vicinity and the aesthetic impacts of these structures are not similar or compatible to the structures on neighboring properties. Consequently, the MDNS mitigation measures will require ten foot wide perimeter landscaping designed to aesthetically buffer these walls from neighboring uses.

TPWAG alleged more technical environmental impacts related to the geotechnical studies, hazardous materials, drainage, wetlands impacts, groundwater impacts, landslide hazards, seismic hazards, and retaining walls. The expert testimony and reports provided by the applicant, verified by experts from the City staff and in some cases, third party peer review, proved to be more compelling than the expert testimony provided by TPWAG, especially when factoring the substantial weight that must be given the SEPA responsible official's determination that the proposal will not create any probable significant adverse environmental impacts. One issue that did require some additional

mitigation was hazardous waste. An appellant expert testified that the prior ownership of the property by the US Department of Defense raised a concern that the property may contain hazardous waste. The applicant refused to grant access to the subject property for purposes of testing for hazardous waste or any other site investigation. The applicant also acknowledged that it did a Phase I hazardous waste environmental review when it purchased the property, but never offered the review into evidence. Given the somewhat suspect conduct of the applicant, an MDNS condition of review will require that the applicant submit its Phase I review to staff prior to development, to verify that there is no hazardous waste issue with the site.

The applicant's SEPA appeal was more limited in scope and only challenged three of the City's MDNS conditions, specifically Conditions 1, 3 and 6. At hearing the City and applicant agreed to revised language for Conditions 1 and 3. Condition No. 6 remained the only contested issue in the applicant's appeal. The condition required a 15-foot landscaping buffer around the entire perimeter of the development. This decision only found a ten -foot buffer necessary, limited to areas adjoining proposed retaining walls to conceal the walls from neighboring view.

A summary of testimony is attached as Attachment A. The summary is provided as a convenience and reference to those who would like an overview of the evidence presented at the two days of hearings on this application. The testimony section should not be construed as any formal findings of fact and also do not represent what was determined to be important to the final decision.

CONTENTS

II. TESTIMONY

Please see Attachment A for testimony summary.

III. EXHIBITS

Please see Attachment B for the exhibits admitted during the hearing. Exhibits admitted after the hearing are as follows:

Exhibit AS: City of Renton Preliminary Plat Condition Revision Response (December 11, 2014)
Exhibit AT: TPWAG Post Hearing Closing Argument (December 14, 2014)
Exhibit AU: TPWAG Motion – Late Filing (December 15, 2014)
Exhibit AV: Henley Response to TPWAG Motion – Late Filing (December 15, 2015)
Exhibit AW: Henley (Proposed) Order Denying TPWAG Motion – Late Filing (December 15, 2014)
Exhibit AX: Hearing Examiner Ruling – Late Filing (December 15, 2014)
Exhibit AY: Henley Response – TPWAG Post Hearing Closing Argument (December 19, 2014)
Exhibit AZ: Henley Reply – City of Renton Preliminary Plat Condition Revision Response (December 19, 2014)
Exhibit BB: City of Renton – TPWAG Post Hearing Closing Argument (December 22, 2014)

IV. FINDINGS OF FACT

Procedural:

1. Applicant. Henley USA, LLC.

2. Hearing. A consolidated hearing on the preliminary plat application and SEPA appeals was held on November 18, 2014 and continued to December 8, 2014 in the City of Renton Council City Chambers. The record was left open for the appellants to provide a SEPA Closing Argument by December 12, 2014. City staff was also given until December 12, 2014 to provide a SEPA Rebuttal. City staff and the applicant had until December 19, 2014 to provide SEPA closing arguments and preliminary plat comments.

Substantive:

3. Project Description and Appeal.

A. Project Description. The applicant requests preliminary plat approval for the subdivision of 21.66 acres into 97 single-family residential lots. There is an alternate plat with 96 lots to allow for 30% tree retention (Exhibit 3). The property is located at the dead end of SE 18th Street. It is bordered on the south by the Cedar River Pipeline and on the east by the Mercer Island Pipeline. Two appeals of a mitigated determination of nonsignificance ("MDNS") issued under the Washington State Environmental Policy Act ("SEPA") were consolidated with the review of the preliminary plat.

The subject property consists of four parcels. The majority of the site is located in the R-8 zone. A small portion is located in the R-4 zone. All proposed lots are located in the R-8 zone. The proposed

lots would range in size from 4,500sf to 8,456sf. The average lot size is 5,399sf. Under either the 96 lot or 97 lot scenarios, density would be equal to or less than 5.70 dwelling units per acre. In addition to the residential lots, 13 tracts are proposed for sensitive areas, tree retention, storm drainage, access, pedestrian connections, and open space including an existing 10 foot wide vegetated buffer along the northern boundary. Access to the site would be gained from SE 18th Street with secondary access extended from 124th Place SE.

The site is currently vacant with 1,305 significant trees. The applicant has proposed to retain or mitigate 188 trees in order to achieve the objective of 30% tree retention requirement. Adequate tree retention requires approval of the 96-lot alternative. The site slopes generally to the west/northwest at an approximate average slope of 10-15% with localized slopes of 25%. The site contains three Category 2 wetlands (Wetlands A, C, and, D) and two Category 3 wetlands (Wetlands B and E). The applicant is requesting a Critical Area Exemption for the extension of SE 18th Street through portions of the buffer associated with Wetland E.

The applicant has submitted a Wetland Report, Drainage Report, Traffic Impact Analysis, Geotechnical Engineering study, Arborist Report, and Habitat Data Report. Independent secondary studies for Transportation and Wetlands are included with the application.

B. SEPA Appeal. A mitigated determination of nonsignificance ("MDNS") was issued for the proposal on September, 2014. Two timely appeals of the threshold determination were filed by the Tiffany Park Woods Advocacy Group (TPWAG) and Cairncross & Hempelmann on behalf of Henley USA, LLC.

1. Applicant SEPA Appeal. The applicant challenged three of the City's MDNS conditions, specifically Conditions 1, 3 and 6 on the grounds that they impose unlawful obligations on the applicant and restrict the applicant's ability to develop the plat.

a. MDNS Condition 1. The applicant argued MDNS Condition 1 should be revised because the condition required earthwork to comply with an earlier, preliminary version of the geotechnical report which has since been superseded. The applicant requested the SEPA condition be revised to state the earthwork shall be consistent with the final geotechnical report submitted prior to construction (Exhibit J). City staff and the applicant then agreed upon the following language for Condition No. 1, which is found to adequately address pertinent environmental impacts:

> *All earthwork performed, implemented by the applicant, shall be consistent with the recommendations of the geotechnical report, prepared by Associated Earth Sciences, Inc., dated September 28, 2012 or consistent with the recommendations of the final City-approved geotechnical report.*

b. MDNS Condition 3. The applicant's concerns over MDNS Condition No. 3 became moot since the filing of its appeal and the City and applicant have been able to agree upon a revised condition that acceptably mitigates against environmental impacts.

MDNS Condition 3 provides as follows,

> *The applicant shall be required to retain 30% of the significant trees on site with exclusions for those trees that are considered dead, diseased, or dangerous, trees located within proposed rights-of-way, and trees located within the critical areas and their associated buffers.*

The applicant initially argued the condition should either be struck as a SEPA condition or modified to require compliance with the Tree Cutting and Land Clearing Plan, completed by Washington Forestry Consultants, Inc. (August 27, 2014) which complies with the 30% retention requirement (Appeal Exhibit A, Attachment 11).

City staff disagreed. They argued that there are probable averse environmental impacts that are being mitigated by the MDNS condition. The City argued the MDNS Condition prevents the applicant from using mitigation under RMC 4-4-130(H)(1)(e)(i) to replace trees and instead requires retention of significant trees.

The Tree Cutting and Land Clearing Plan, completed by Washington Forestry Consultants, Inc. (August 27, 2014) established that overall the proposal will actually meet the City's SEPA 30% tree retention requirement. To meet this requirement, the applicant must retain or mitigate 188 on-site trees. The Washington Forestry Consultants plan proposes to save 181 of these trees and mitigate the final seven trees. The applicant's tree retention plan analyzed just the 96 lot alternative. However, Mr. Galen Wright of Washington Forestry Consultants stated new field studies performed since the August 27, 2014 report have identified additional significant trees on-site beyond those mapped in the original field survey. These trees will be retained, bringing the total retention to well above the 188 required trees. Mr. Wright stated he was much more confident now regarding the location of trees, their health and which might be viably preserved.

Since the applicant ultimately achieved the 30% retention objective, the City and applicant agreed to the following tree retention language as a condition of approval,

> *The applicant shall provide a final Tree Retention Plan, complying with the 30% tree retention mitigation measure while demonstrating proposed walls would not impact trees proposed for retention. The Final Tree Retention Plan shall be submitted to, and*

approved by, the Current Planning Project Manager prior to construction permit approval.

c. MDNS Condition 6. MDNS Condition No. 6 remains the only contested portion of the applicant's appeal. MDNS Condition No. 6 as adopted by the SEPA responsible official required a 15-foot landscape buffer around the entire perimeter of the development. For the reasons identified in FOF No. 5, this perimeter has been reduced to ten feet and must only be placed in areas to conceal proposed retaining walls from neighboring view.

2. TPWAG SEPA Appeal. TPWAG raised several issues in its SEPA appeal, alleging both inadequate review and probable significant adverse environmental impacts. The impacts identified by TPWAG are addressed in FOF No. 5.

4. Surrounding Area. The subject site is surrounding on all sides by single family residential development. To the south it is bordered by the 100 foot wide Cedar River Pipeline. To the east, it is bordered by the 60 foot wide Mercer Island Pipeline. The zoning surrounding the subject on all sides is single family residential (R-8), though there is also a small portion of R-4 zoning to the east.

5. Adverse Impacts. The proposal does not create any probable significant adverse environmental impacts. Adequate public facilities and drainage control are provided as determined in Finding of Fact No. 6. As noted in Finding of Fact No. 5, two appeals to the threshold were filed. The issues on appeal from the applicant, Henley, are discussed first. The issues on appeal for the project opponent, the Tiffany Park Woods Advocacy Group, are then discussed. Finally, other impacts not related to either appeal but related to the preliminary plat are discussed below.

A. Applicant SEPA Issue. As identified in FOF No. 3, only one issue remains in the Applicant's SEPA appeal, specifically the need for perimeter landscaping. It is determined that only the applicant's proposed retaining walls create probable significant environmental impacts and that these impacts can be reduced to nonsignificant levels with ten foot sight obscuring landscaping limited to perimeter areas in front of the retaining walls.

1. Proposed Development Aesthetically Compatible with Surrounding Development. With the exception of retaining walls (addressed separately), the proposed development does not create any probable significant impacts because of aesthetic incompatibility with the surrounding neighborhood. A site visit and aerial photographs (Ex. K.6.c) reveal that the surrounding neighborhoods are not exceptionally wooded or treed and that the amount of trees proposed for retention by the applicant would not be less than

surrounding development. Further, although the applicant proposes a modest increase in density, reasonable minds would certainly differ as to whether this difference in density would create a significant aesthetic impact. The developed portions of the plat are all in the R-8 zone, though the proposed residential density will be 5.7 dwelling units per acre. The minimum density requirement in the zone is 4.0 dwelling units per acre. All adjacent properties are zoned R-8. Proposed lot sizes would range from 4,500 square feet to 8,456 square feet with an average lot size of 5,399 square feet. While the proposed lots appear to be, on average, somewhat smaller than those of the surrounding developments, they are not significantly smaller and are at a density that is lower than would otherwise be allowed within this zone. Further, because of the presence of the two pipelines and the perimeter location of the critical areas tracts, very few of the lots will be directly adjacent to existing residential lots. The pipelines do not offer much in terms of vegetated screening but they do physically separate the proposed lots from existing lots. Any difference in the size of the lots will not be aesthetically significant, especially given the separation of the project from the surrounding neighborhood.

2. Loss of Trees Not a Probable Significant Environmental Impact. It is determined that the loss of trees beyond those required to be retained by City code does not qualify as a probable significant adverse environmental impact. In its environmental review, the City suggests that the perimeter is necessary to make up for the fact that a significant number of trees will be removed, thereby adversely affecting the views currently enjoyed by neighboring properties. Numerous adjoining property owners also commented on this impact. It is determined that the loss of trees owned by the applicant does not qualify as a significant adverse environmental impact. Of course, almost all development of vacant parcels involves the removal of trees. As discussed in COL No 5, in order to justify mitigation beyond the minimum standards set by the City's landscaping code, the project must involve some fairly unique or significant impacts that were not anticipated in the adoption of that code. The existence of such a large parcel (and large number of associated trees) is arguably unique, but that argument is undermined to a large degree by the subjectivity involved in aesthetic review. Given that the applicant is retaining 30% of the trees, it is debatable whether the loss of the other 70% creates a significant aesthetic view impact to neighboring property owners, especially with the buffering that will be required by this decision to obscure retaining walls.

The assessment of aesthetic impacts occasioned by the loss of trees is also tempered by the fact that it is debatable from a legal standpoint whether the applicant can be made to mitigate against the loss of a voluntary aesthetic benefit it has provided to the surrounding community. The applicant has had no obligation to retain all of the trees on its property in the past. Surrounding property owners have no entitlement to this currently existing aesthetic benefit. SEPA only requires mitigation and analysis of impacts created by development. The loss of trees in excess of those required by City code is not an impact created by the development, since those trees could have been removed at any time prior to development. The site visit, the record and the code do not reveal that any other properties in the vicinity have had to retain perimeter landscaping or that they provide a similar aesthetic benefit to the surrounding community. Given that no such need was found in the past when trees were removed by other development it is at least somewhat questionable why that is found necessary now in the absence of any code provision expressly requiring such a perimeter.

3. Retaining Walls Create A Probable Significant Adverse Environmental Impact. It is determined that the retaining walls proposed by the applicant in excess of four feet create a probable significant adverse environmental impact. As noted in the Staff Report, the applicant is proposing multiple walls on the proposed project. Some of the walls will be rockeries. Some walls are retaining walls which will face into the site. These are walls that allow for a finished grade for a lot to be below the surrounding grade. Other walls will be lock and load walls that allow for a finished lot grade above the surrounding grade. Six foot fencing is allowed on top of both types of walls. These walls are visible from outside the site. Staff notes the applicant has proposed lock and load walls ranging in height from four feet potentially up to 21 feet high. During testimony, Mr. Talkington stated revised grading plans may allow for reduced retaining wall heights.

A site visit to the surrounding neighborhoods was conducted December 28, 2014. Though the subject is largely surrounded by pipeline easements, these easements are cleared of vegetation allowing a direct line of sight into the development and of the retaining walls. The site visit demonstrated that high retaining walls are not a common feature of the surrounding development. The applicant proposes solid rock or concrete walls of up to 21 feet in height. These walls will impact the view of the property from surrounding residences, especially given they are an uncommon feature in the area. As proposed, the

view from surrounding residences will be significantly impacted as they change from forest canopy and surrounding homes to rock wall faces of nearly two stories tall in places. The Staff Report notes several walls will be seen by the public (proposed Lots 40, 41, 46, 47, 80, 82, 83-90, 93 and 94)[1].

When considering retaining wall impacts, the height of the wall affects the significance of the impacts. Low retaining walls do not block sunlight and air or obstruct views. The building codes only require building permits for retaining walls four feet or more in height (RMC 4-5-060(E)(2)(c)(iv)). This serves as a good threshold height for aesthetic impacts. Retaining walls lower than four feet do not obstruct views for a person of average height. They also tend to be more commonly found in neighborhoods since no building permit is required. For these reasons, the findings in the preceding paragraph on retaining wall aesthetic impacts are limited to retaining walls over four feet or more in height. Retaining walls less than four feet in height are not found to create probable significant adverse environmental impacts.

4. Ten Foot Perimeter Landscaping Fully Mitigates Retaining Wall Impacts. The aesthetic impacts of the retaining walls can be fully mitigated by the by a ten foot perimeter landscaping strip. The City is recommending a fifteen foot buffer of trees. During testimony, the applicant's arborist stated a ten foot wide buffer with a staggered double row of conifers would create a very dense screen in 10 years. He noted a 15 foot buffer is not sufficient in width to plant a third row of conifers, which would require a 30 foot buffer. The City's arborist concluded that at least 35 feet was necessary to provide for a site-obscuring buffer of trees and that ten verses fifteen feet would not make any material difference in screening (Decision Attachment A, page 7). Given that staff's 15 foot recommendation is counter to the recommendation of its own arborist[2] and that the applicant's arborist provides a reasonably good

---

[1] In any discussion of lot numbers, this decision is referring to the numbering scheme utilized in the 97-lot alternative (Exhibit 2). The nomenclature of the 96-lot alternative is exactly one lot lower for each lot because the Tree Retention Plan recommended the elimination of Lot 1 of the 97 lot alternative to maintain 30% tree retention.

[2] 1 Staff also advocated for a 15 foot buffer because it would help retain some of the treed character of the project site. See Exhibit A1, page 19. As outlined in FOF No.5.A.1, the applicant cannot be legally made to compensate for the loss of trees on its property. Further, staff also based its 15 foot buffer requirement upon RMC 4-4-070(F)(4)(b). This perimeter buffer provides for aesthetic screening between single and multi-family housing. This standard does serve as a good analogous standard for retaining wall impacts. Unfortunately, the standard only requires six foot high vegetation. A six foot high hedge set against a 21 foot high retaining wall does not accomplish a great deal of

explanation of how a ten foot buffer can effectively screen the property, it is determined that the ten foot buffering advocated by the applicant's arborist will provide a fully sight obscuring buffer to the retaining walls and as such will prevent the retaining walls from creating probable significant adverse environmental impacts.

Limiting the landscape perimeters to the areas where the retaining walls are four feet or more in height should also completely obstruct them from the view of neighboring property owners. For these reasons, the conditions of approval will require the applicant to revise its landscaping plan to provide for site obscuring perimeter landscaping adjacent to areas where the retaining walls are four or more feet in height, specifically in the perimeter areas close to Lots 40, 41, 46, 47, 80, 82, 83-90, 93 and 94.

B. TPWAG SEPA Issues.

1. Aesthetic Impact Due to Loss of Trees. The appellants argue there is a significant adverse aesthetic impact due to the loss of trees. With the exception of retaining walls (addressed separately), the proposed development does not create any probable significant impacts because of aesthetic incompatibility with the surrounding neighborhood. As discussed above in Finding of Fact 5.A.1, the surrounding neighborhoods are not exceptionally wooded or treed and the amount of trees proposed for retention by the applicant would not be less than surrounding development. As described in Finding of Fact 5.A.2, the is retaining 30% of the trees. The applicant has had no obligation to retain all of the trees on its property in the past. Surrounding property owners have no entitlement to this currently existing aesthetic benefit. The loss of trees in excess of those required by City code is not an impact created by the development, since those trees could have been

---

aesthetic mitigation. For this reason, the RMC 4-4-070(F)(4)(b) buffer does not serve as an ideal analogous landscaping standard. What the RMC 4-4-070(F)(4)(b) and other RMC 4-4-070 perimeter buffer requirements does show is that the City Council was uncomfortable requiring more than a fifteen foot wide buffer in any situation. Requiring more than 15 feet does in fact to place an unreasonable burden upon the applicant for something as subjective as an aesthetic impact. It is for this reason likely that the City went against the findings of its arborist and only required a fifteen foot buffer instead of a 30 foot buffer. This was an appropriate approach, but did not go far enough since as testified by the applicant's arborist, a fifteen foot would not provide for any significant protection beyond a ten foot buffer. Given that a 30 foot buffer would be unreasonable mitigation, the imposition of a ten foot buffer has to be found acceptable even though there a small chance it may not provide for 100% screening as concluded by the City's arborist.

removed at any time prior to development. It is also at best debatable whether the loss of the other 70% creates a significant aesthetic view impact to neighboring property owners, especially with the buffering that will be required by this decision to obscure retaining walls.

2. Potential Presence of Hazardous Materials. No impacts from hazardous materials are anticipated. The appellants demonstrated the subject property had at one time been owned by the Department of Defense. They alleged there might be hazardous materials on site based on this former user. For the past 65 years, for all intents and purposes, the site has been covered by a seemingly healthy forest canopy. The appellants were unable to demonstrate evidence of any overt signs of contamination visible on the site that might justify overturning the substantial weight due the SEPA official's determination that the project site does not contain any hazardous waste necessitating further environmental review. However, nor were the appellants granted access to perform their own studies. The applicant also neglected to submit a Phase 1 Environmental Site Assessment it said was prepared for the proposal, even after the appellants made the study an issue during the hearing. The actions of the applicant on the hazardous waste issue create uncertainty as to whether the project site is free from hazardous waste. Given that this issue remains unresolved, a condition of approval will require the applicant to submit the results of the Phase 1 ESA to City staff for confirmation that there are no hazardous materials on site.

3. Wildlife Habitat and Connectivity. No probable significant adverse impacts to wildlife habitat are anticipated and the SEPA Responsible Official had sufficient information to adequately assess the impacts. The applicant submitted a Revised Wetland Determination and Response Letter (Exhibit 5), a Habitat Assessment (Exhibit 6), and two Habitat Assessment Technical Memorandums (Exhibits 16 and 17). The City required an independent secondary review of the wetlands report (Exhibit 14). As noted in Conclusion of Law 3.B below, the SEPA responsible official must make a prima facie showing that he has based his determination upon information reasonably sufficient to evaluate the impacts of a proposal (WAC 197-11-335). These multiple studies and memoranda were more than adequate to fully assess the wildlife impacts of the proposal as the appellants have not demonstrated any additional information that could have made any material difference in the official's conclusions.

No significant adverse impacts are anticipated for wildlife or habitat connectivity. With the exception of pileated woodpeckers and Townsend's bats, the fish and wildlife habitat assessment found no listed or endangered species or priority habitat on site. Though the property may function as marginal habitat for many common species, it is geographically isolated from the Cedar River corridor by the Mercer Island Pipeline easement, a residential street, residential lots, a steep slope and the Bonneville Power Administration's easement. Testimony from all sides spoke to the heavy human disturbance on the site including recreational walkers, bikers, unleashed dogs, and the presence of unpermitted structures and pits including forts and paint ball hides. The applicant's wildlife expert, Racheal Villa of Soundview Consultants testified that the formalized protection of the wetlands and buffers on site would result in an improvement in habitat conditions for both pileated woodpeckers and Townsend's bats over the present situation due to the fairly degraded condition of the habitat at present.

4. Seismic Hazards. The SEPA Responsible Official had adequate information to assess the seismic hazards and no probable significant adverse impacts are anticipated in regards to these hazards. As to adequacy of review, the applicant provided a geotechnical report by AES (Exhibit 7) that was reviewed, by the request of the applicant, by Earth Solutions, NW (Exhibit K.2). The AES conclusion in the geotechnical report stated the site, from a geotechnical engineering standpoint, is suitable for support of conventional paving, lightly loaded structures and typical buried utilities, all typical improvements in a single family residential subdivision. The AES preliminary geotechnical report and subsequent peer review by Earth Solutions, NW provide information reasonably sufficient to evaluate the environmental impacts of the proposal under WAC 197-11-335.

The appellants note the nearest USGS mapped fault zone is 3.9 miles away, though they feel additional testing should occur to determine if there are unmapped fault zones. The appellants argued there was evidence of ground movement in the form of bent trees and hummocky land which could indicate several things including seismic shifting or landslide activity caused by a shallow groundwater table. The City has mapped the site as a Low Seismic Hazard area and outside of the Coal Mine Hazard areas. The applicant has provided a geotechnical report by AES that was reviewed at the applicant's request by Earth Solutions, NW, the firm hired to perform geotechnical work for the applicant going forward. Mr. Coglas of Earth Solutions, NW testified

there are no seismic hazards on the property (Decision Attachment A, Page 21). Mr. Coglas went on to state with respect to site stability and groundwater, the stability of the predominantly flat to gently sloping property is good. In his opinion and based on geologic mapping and subsurface data for the site and surrounding area, the site is very similar to the surrounding developed residential area. There is nothing in the record to indicate an increased danger of seismic hazard beyond that of the surrounding properties. A single-family residential plat in this area is in no more probable seismic danger than the surrounding developed properties. The proposal will not create any probable significant adverse environmental impacts in regards to seismic hazards.

5. Landslide Hazards. The SEPA Responsible Official had adequate information to assess landslide hazards. They appellants argued the soil under the plat has structural anomalies that require further study to determine if there are landslide or other geologically hazardous conditions. The appellants point to bent trees and uneven surfaces located on the site may indicate shallow or slightly deeper ground movement which may be indications of landslide activity in the past or future propensity of slides. They note they requested access to perform their own studies but were denied. Specifically, the appellants have requested expanded soils tests, percolation tests and more test pits and borings to measure localized hydraulic conductivity. As noted above, the applicant has provided a geotechnical report by AES that was reviewed by Earth Solutions, NW. Mr. Coglas of Earth Solutions, NW testified there are no landslide hazards on the property (Decision Attachment A, Page 20). The City's Development Engineering Manager, Mr. Lee, testified he concurred with Mr. Coglas' assessment of the landslide hazard risk. Mr. Lee is a professional engineer with extensive experience in site development and civil engineering in Washington. He noted, the steep areas are very small (15-20' feet long) and do not warrant slope stability analysis. Overall on the project site, the approximate slope is only 10% or so. There are no sensitive or protected slopes on the subject property. The majority of the subject site has less than 15 percent slopes. There are a few areas with slopes of 15 percent to 35 percent. These areas are characterized as Medium Landslide Hazard areas. Mr. Lee stated the City code does not require additional slope stability analysis for these areas.

The appellant also asserted that the number and location of test pits were insufficient to evaluate slope stability. Mr. Lee testified there were sufficient numbers of test pits to gauge impacts on ground movement from groundwater

on site. He would have preferred to see a few more, especially in the vault area. However, as Mr. Coglas testified, the City may require extra analysis during final engineering as the design is finalized. He stated he does not typically require additional geotechnical analysis at this stage of the process. Mr. Lee felt the information provided was adequate to allow for a determination of impact on the site (See Decision Attachment A, Page 24).

Mr. Lee's objectivity as a staff employee and his engineering expertise are determinative on the slope stability issue. He clearly reviewed the geotechnical reports in detail and found no need for further investigation or additional information. The findings of the geotechnical analysis are also compelling on their own and the relatively modest slopes of the project site do not raise any apparent cause for concern. For these reasons, it is concluded that the SEPA responsible official had reasonably adequate information to assess the slope stability of the project site.

6. Groundwater. The SEPA Responsible Official had reasonably adequate information to assess the groundwater impacts and there are no probable significant adverse groundwater impacts associated with the proposal. The appellants argued there was insufficient study of the groundwater situation on site and the potential affect groundwater might have on development. They note they requested access to perform their own studies but were denied. Specifically, they appellants have requested expanded soils tests, percolation tests and more test pits and borings to measure localized hydraulic conductivity. The applicant provided a geotechnical report (Exhibit 7), a peer review of the geotechnical report (Exhibit K.2), a wetlands report and a revised wetlands report (Exhibit 5), and a drainage report (Exhibit 8). The wetlands reports were independently reviewed by Otak (Exhibits 14 and 15). The City's Development Engineer, Mr. Lee stated the applicant had provided a sufficient number of test pits to gauge impacts of potential groundwater on site (Decision Attachment A, page 24). Given the extensive information provided and the peer review, the applicant has provided information sufficient for the SEPA Responsible Official to issue a threshold determination with respect to groundwater impacts.

There are no anticipated adverse impacts related to the groundwater table. The appellants argue groundwater saturation levels at this site make it undevelopable. They point to the AES geotechnical report (Exhibit 7), the Shultz wetlands report (Exhibit 5), the Technical Information Report by

Barghausen and the Otak wetlands reviews (Exhibits 14 and 15) as all demonstrating the groundwater table is at or within seven inches of the surface in all wetland areas. Groundwater near the surface is defining feature of wetlands. However, the appellants argue the water table is a flat contour throughout the project site and, as a consequence of a high water table, water intrusion will disrupt or prevent proper installation of utilities, foundation drains and the stormwater vault.

The applicant's geotechnical engineer, Ray Coglas, testified there is perched groundwater on the site, rather than a flat table, a statement Mr. Lee concurred with during testimony (Decision Attachment A, pages 22 and 25, respectively). If the site had a flat water table close to the ground surface all over the site; the whole site would be underwater because of the varying topography, which is of course not the case. He stated perched waters trapped by impervious soils are limited in area and capacity and will drain away when cuts are made to hillsides. The water AES encountered was seepage from perched water rather than the actual groundwater table (Decision Attachment A, page 22). Mr. Coglas referred to the AES test pits and stated they showed no caving or seepage which would indicate weakness in the soils or significant groundwater at or near the surface outside of wetland areas. He stated though there will be some groundwater seepage, he does not expect the site will require dewatering or extensive pumping. AES found no groundwater in its test pits. Mr. Coglas stated even if the appellants are correct and that groundwater is at zero elevation, it could be managed without damaging the feasibility of the project. Mr. Lee also concurred with this statement.

Mr. Coglas noted the soils at the subject are not unique to this subject. The entire subject is surrounded by existing development at a similar intensity to the proposed development on similar topography and soils. There is no indication from the record or from the site visit to suggest the utilities; infrastructure or house foundations in the surrounding neighborhoods have failed due to perched groundwater or a high water table. Mr. Coglas noted the presence of groundwater will not preclude development if best management practices are followed.

Given Mr. Lee's concurrence in the opinion of Mr. Coglas and the substantial weight required of the findings of the SEPA responsible official, it is determined that the proposal will not create any probable significant adverse groundwater impacts.

7. Downstream Impacts. The SEPA Responsible Official has information reasonably sufficient to evaluate the downstream impacts of the proposal. The City required a Level 1 downstream analysis. The proposed Level 2 Flow Control (Exhibit A, page 31) will restrict the flow of the 2-year release rate to 50% of the pre-developed site conditions, which will help to reduce an existing drainage issue. Mr. Lee stated the City is uncertain of a segment of the pipeline that takes the water downstream of the project site and have therefore requested a Level 2 downstream analysis to be performed prior to building permit approval. They want to make sure the project will not exacerbate existing downstream flooding issues. An NPDES permit will be required for the project, which will stipulate the allowable discharge into the conveyance system (Decision Attachment A, Page 25). The City additionally established a SEPA mitigating condition requiring Level 2 downstream analysis for ¼ mile from the project site. All of the requirements must be met before a building permit or construction permits are issued. With these conditions in place, the City has reasonably sufficient information at this stage of review to evaluate down stream impacts.

8. Discharge into Wetlands. The proposed discharge of roof run-off into wetlands will not create a probable significant adverse environmental impact. The detailed local, state and federal standards applicable to stormwater run-off are determinative on the existence of adverse impacts. If the proposed drainage is compliant with applicable regulations, there are no adverse impacts. The appellants assert that the proposed roof run-off into wetlands is in violation of the Clean Water Act. As noted by the applicant, the King County Surface Water Drainage Manual specifically excludes drainage from roofs (except untreated metal roofs) from consideration as pollution generating sources (Exhibit AF). The appellants have not provided any citation or court opinion that roof run off discharge constitutes a violation of any applicable regulation and no such violation is apparent from the reading of the Clean Water Act. Mr. Talkington, in his testimony for the applicant, noted that discharge of clean or non-point source polluted stormwater into wetlands is common practice and is required to hydraulically charge the wetlands. Mr. Lee stated the applicant had complied with all city, state and federal code requirements with respect to stromwater. Mr. Lee testified the codes are sufficient to address all probable stormwater impacts. He further noted a National Pollution Discharge and Elimination System permit will be required for the project, which will ensure that no stormwater pollutants are released into wetlands or groundwater. The permit will include background

and discharge monitoring. No building permit or construction permits will be issued until the NPDES conditions are met. Since the proposed stormwater discharge is consistent with all applicable regulations, is a standard practice for development and also meets the approval of staff, it is determined that the proposed discharge to wetlands will not create any probable significant adverse environmental impacts.

9. Air Quality. No significant adverse impacts to air quality are anticipated. During the construction phase of the project, there will be exhaust from trucks and heavy equipment. However, after the construction phase is over, the subdivision will function similarly to the surrounding development with respect to emissions and air quality issues. The proposed development is functionally the same as the existing development pattern. Nothing in the record indicates there will be significant adverse impacts with respect to air quality.

C. Other Impacts Related to the Preliminary Plat.

1. Wetlands. As proposed and conditioned, the proposal will not create any significant adverse impacts to wetlands. There are five wetlands on site. Three of the wetlands are Category 2; the others are Category III. The applicant submitted a Wetland Determination, prepared by C. Gary Schulz, Inc. (October 30, 2013) and a revised Wetland Determination in response to revisions to the plat including the use of a drainage vault, instead of a drainage detention pond, and the inclusion of a vegetated buffer along portions of the site perimeter (February 28, 2014).

Based on public comments (See Exhibit 10.6), staff required an evaluation by an independent qualified professional regarding the applicant's wetland analysis and the effectiveness of any proposed mitigating measures. On April 3, 2014 an independent secondary wetland review was provided to the City by Otak (Exhibit A, Attachment 14). Following the completion of recommendations in the Otak memo, the applicant submitted a Revised Wetland Determination and Response (June 3, 2014) (Exhibit A, Attachment 5).

At the hearing, members of the public expressed concern regarding the protection of wetlands and wildlife habitat. There was specific concern regarding removal of trees and wetland hydrology. During testimony, Ms.

Villa of Soundview Consultants stated she was hired by the applicant to perform supplementary wetland review for fish and wildlife habitat. In her study, she found no state or federally listed or protected species on the site. She noted the habitat is fairly disturbed now with evidence of a lot of human intrusion. In her opinion, protection of the wetlands and habitats with proper fencing and signage would result in better protection for the habitat than exists currently.

The Otak Supplemental Independent Secondary Review concluded water quality, wetland hydrologic function and flood storage will be protected. The applicant proposes buffer averaging provisions (RMC 4-3-050(M)(6)(f)). The buffer averaging plan provides additional buffer area at ratios that range from 1.6:1.0 to 9.5:1.0. Wetlands A, B, C, and D would have buffer areas significantly greater following the buffer averaging proposal. However, staff are concerned the proposed adjustments will not provide adequate buffering on the north and east sides of Wetlands B and C to take into account the proposed "lock & load walls" in those locations. The applicant will be required to submit a Final Mitigation Plan (RMC 4-8-120(W)) demonstrating appropriate mitigation for all wetlands and buffer impacts prior to permit approval.

The applicant has requested a critical areas exemption allowing a permanent buffer impact to 14sf of the Wetland E buffer. The exemption would allow the applicant to construct the required full street improvements at SE 18th Street (RMC 4-6-060). This area (219sf) has already been impacted by past infrastructure construction. Staff recommends approval of the critical areas exemption with mitigation for the impact.

The critical areas on site have a total area of 118,494 square feet (2.72 acres) and would be located in (Tracts B, G, K, & M). The applicant is proposing to increase wetland buffers which would result in a total native open space used to preserve native forest habitat of approximately 175,199 square feet (4.02 acres). As conditioned, no impacts to wetland habitat are anticipated.

Given the extensive review of wetland impacts, staff's review and approval of wetland mitigation, and the applicant's compliance with all applicable wetland regulations, it is concluded that the proposal will not create any adverse impacts to wetlands.

2. Tree Retention Required. The proposal provides for adequate tree retention because it complies with the City's tree retention standards, RMC 4-4-130(C). The applicant submitted two versions of the preliminary plat application. The first version is a 97 lot alternative that does not achieve 30% significant tree retention. The second plat alternative is a 96-lot preliminary plat that achieves 30% significant tree retention and implements the applicant's Tree Protection Report (Exhibit 3). Since the 96-lot alternative implements the applicant's tree retention plan and is consistent with the agreed upon SEPA mitigation measure requiring 30% retention, this is taken as the applicant's proposal and is the design approved by this decision. If the applicant was still intending to pursue a 97-lot design, it should request reconsideration.

No other significant impacts are reasonably anticipated from the evidence contained within the administrative record.

6. Adequacy of Infrastructure/Public Services. The project will be served by adequate infrastructure and public services. Preliminary adequacy of all infrastructure facilities has been reviewed by the City's Public Works Department and found to be sufficient. Specific infrastructure/services are addressed as follows:

A. Water and Sewer Service. This site is located in the City of Renton water service boundary. There is an existing 8-inch water main stubbed to the site in SE 20th Court, in SE 19th Court and SE 18th Court. This site is located in the 590-water pressure zone. Static pressure in the area ranges from 65-82 psi. The site is located in the City of Renton sewer service area. There is an 8-inch sewer main in SE 18th Street.

B. Police and Fire Protection. Police and Fire Prevention staffs indicate that sufficient resources exist to furnish services to the proposed development; subject to the provision of Code required improvements and fees. A Fire Impact Fee, based on new single family lots, will be required in order to mitigate the proposal's potential impacts to City emergency services. The fee is payable to the City as specified by the Renton Municipal Code. Currently the fee is assessed at $479.28 per single family residence. This fee is paid at time of building permit issuance.

C. Drainage. As conditioned, the proposal provides for adequate drainage facilities. In order to address concerns raised by staff, as recommended by them a condition of approval requires a Level 2 downstream analysis for ¼ mile from the project site to determine if the proposed project would exacerbate existing downstream capacity issues. The applicant submitted a Preliminary Drainage Report prepared by Barghausen, dated

February 24, 2014 (Exhibit 8). Staff has determined that the preliminary plan is consistent with the 2009 King County Surface Water Manual and City of Renton Amendments to the KCSWM, Chapters 1 and 2. Full compliance with the Manual will be required during engineering review.

D. Parks/Open Space. The proposal is consistent with adopted parks and open space standards and, therefore, provides for adequate parks and open space. RMC 4-2-115, which governs open space requirements for residential development, does not have any specific requirements for open space for residential development in the R-8 district. However, the applicant is proposing a total of 1.26 acres of passive and active open space, in addition to critical areas on site, for the open space needs of the subdivision. The applicant will also be require to pay park impact fees prior to building permit issuace to ensure that the development pays its fair share of system wide park improvements.

E. Streets. The proposal, as conditioned, provides for adequate streets and associated infrastructure. The applicant is proposing two points of ingress and egress into the plat; SE 18th St and 124th Place SE. The primary neighborhood streets which would serve project traffic include 116th Avenue SE, 126th Avenue SE, SE 168th Street, SE Petrovitsky Road, S. Puget Drive, and 108th Avenue SE-Benson Road S. The project site is currently served by King County Metro Route 148 with Routes 102 and 155 also operating within the vicinity of the subject site. The nearest transit stop for Route 148 is located on Lake Youngs Drive SE and 123rd Avenue SE.

Staff received comments from interested parties with respect to traffic specifically related to the need for additional analysis, trip generation, lack of public transit, level of service, sight distance, the Edmonds Avenue SE/SE 16th Street-Edmonds Way SE intersection, the use of speed bumps for traffic calming, stop signs, and traffic impact fees (*See* Exhibit 10).

The applicant submitted a Traffic Impact Analysis (TIA) prepared by TranspoGroup, (November, 2013) as part of the original submittal. Based on public comments received, staff required an evaluation by an independent qualified professional regarding the applicant's transportation analysis and the effectiveness of any proposed mitigating measures. The TIA concludes that all affected intersections will continue to operate at an acceptable level of service, except the intersection of Benson Drive S/S Puget Drive, which will fall to LOS E by 2018 with or without the proposed project. The addition of AM peak hour project traffic would add approximately five seconds of average delay to this intersection. Staff concluded that this minor amount of delay did not justify

additional mitigation and the reduction in LOS will not violate the City's adopted level of service. The applicant will be required to pay traffic impact fees prior to issuance of building permits, which provides adequate mitigation against the modest traffic impacts created by the proposal.

The TIA noted limited sight distance exists today for southbound motorists on Monroe Avenue SE approaching SE 18th Street due to the roadway geometrics and existing obstructions (fence and on-street vehicle parking). The site distance issue was remedied by an MDNS condition that requires the applicant to install a stop sign.

Included in the Independent Secondary Review (Exhibit 13) was a recommendation for sight distance analysis at the 124th Place SE and SE 158th Street intersection. The report identifies this intersection as a possible sight distance concern. Given the provided TIA does not include an analysis of the sight distance at this intersection, a SEPA mitigation measure was issued requiring the applicant submit a revised TIA including an analysis of the 124th Place SE and SE 158th Street intersection sight distance and recommend appropriate mitigation if needed (Exhibit 22). Site distances at all other study intersections were deemed adequate with the exception of Beacon Way SE at SE 16th Street.

The vertical curve of SE 16th Street presents a visibility concern. A crest vertical curve obstructs sight distance where SE 16th Street crosses Beacon Way SE especially if car speeds exceed posted speed limit signage. There are existing signs (Steep Hill, Slippery When Wet, Advisory 15MPH Speed) at SE 16th Street northeast of Beacon Way SE which help to calm existing traffic at this intersection. Approximately 60% of the project's trips are anticipated to utilize this intersection. Therefore, the ERC issued a SEPA mitigation measure requiring the applicant to install an additional warning sign for a CROSSROAD (W2-1 symbol) with a 15MPH advisory speed on the southwest directional approach to Beacon Way SE, along the north side of SE 16th Street (east of Beacon Way SE) (Exhibit 22). The ERC issued another SEPA mitigation condition at this intersection to reduce cut thru traffic. The applicant is required to install directional information signage (white letters on green background) at S. Puget Drive and 116th Avenue SE facing west (Exhibit 22). The signs are required to read "TIFFANY PARK" with a left arrow and "CASCADE" with a right arrow.

Several public comments requested the use of speed bumps as a traffic calming measure along SE 16th Street to address sight distance (including vertical), cut through traffic, and spin out concerns which would be aggravated by traffic generated by the proposal. The

City does not support the use of speed bumps on public streets. Speed bumps are not desired due to noise, excessive speeds between installations (so drivers can make up time), and result in a reduction in response time of public safety vehicles such as fire engines and aid cars.

Several public comments requested internal pedestrian connectivity, connections to neighboring developments/abutting pipelines, connectivity to Tiffany Park Elementary, and the crossing at SE 16th St and Edmonds Way SE intersection (*See* Exhibit 10.22). No frontage improvements are required on adjacent street frontage. The internal public streets have been proposed with a right-of-way width of 53 feet which meets the City's complete street requirements for residential access streets. Pavement width of 26 feet, 0.5 foot wide curbs, 8 foot wide landscaped planters (on both sides of the street), 5 foot wide sidewalks (on both sides of the street), drainage improvements, and street lighting are required. The applicant is proposing two pedestrian connections to neighboring developments and an abutting pipeline via Tracts C and E.

City staff evaluated the intersection of Edmonds Avenue SE/SE 16th Street-Edmonds Way SE with respect to pedestrian improvements in 1996, 2005 and again in 2007 and determined that crosswalks were not warranted at this location. The additional development traffic will not exceed the threshold to warrant installation of a crosswalk at this location.

As noted in staff testimony above, the proposal will not exceed six dwelling units per acre and therefore is not required to provide alley access.

Several public comments dealt with construction traffic (*See* Exhibit 10.30). The developer will be required to comply with the Renton Municipal Code for haul hours, construction hours, and noise levels. A final Traffic Control Plan complying with the Renton Municipal Code will be required to be submitted and approved prior to construction.

F. Parking. Sufficient area exists, on each lot, to accommodate required off street parking for a minimum of two vehicles per dwelling unit as required by City code.

G. Schools. The Renton School District anticipates it can accommodate any additional students generated by this proposal at the following schools: Tiffany Park Elementary (0.4 miles from the subject site), Nelson Middle School (1.7 miles from the subject site) and Lindberg High School (0.9 miles from the subject site). RCW 58.17.110(2) provides

that no subdivision be approved without making a written finding of adequate provisions for safe walking conditions for students who walk to and from school and/or bus stops. Tiffany Park Elementary and Lindberg High School are within walking distance of the subject site while Nelson Middle School would require future students to be transported to school via bus.

As part of the proposed project, sidewalks would be constructed along on-site roadways which would connect to the existing sidewalk system providing adequate provisions for safe walking conditions for students who walk to and from school and/or bus stops.

Sidewalks would provide a route between the project site and nearby Tiffany Park Elementary School, including available marked crosswalks at the Kirkland Avenue SE/Lake Youngs Way intersection. The Kirkland Avenue SE/Lake Youngs Way intersection is approximately 300 linear feet from where SE 18th St intersects Lake Youngs Way. Given the number of homes proposed, it is very likely that a large influx of students would attempt to cross Lake Youngs Way SE, at the SE 18th Street intersection, which does not currently have a marked crosswalk. In order to provide a more practical safe route to Tiffany Park Elementary from the project site, a SEPA mitigation measure was issued requiring the applicant provide a marked crosswalk at the intersection of SE 18th Street and Lake Youngs Way.

No current bus stops exist for this property as it is currently undeveloped. The Renton School District will be making provisions for the location of bus stops for those students who will be attending Nelson Middle School.

A School Impact Fee, based on new single-family lots, will also be required in order to mitigate the proposal's potential impacts to Renton School District. The fee is payable to the City as specified by the Renton Municipal Code at the time of building permit application. Currently the fee is assessed at $5,455.00 per single family residence and would increase to $5,541.00 on January 1, 2015.

V. CONCLUSIONS OF LAW

1. Authority. RMC 4-7-020(C) and 4-7-050(D)(5) provide that the Hearing Examiner shall hold a hearing and issue a final decision on preliminary plat applications. RMC 4-9-070(R) and RMC 4-8-110(A)(2) grant the Examiner authority to review and make final decisions on SEPA appeals.

2. Zoning/Comprehensive Plan Designations. The majority of the subject property is zoned Residential 8 dwelling units per net acre (R-8). A small portion of the subject property is zoned Residential 4 dwelling units per net acre (R-4). Only the R-8 portion of the property is proposed for residential development. The comprehensive plan map land use designation is Residential Single Family (RSF) and Residential Low Density (RLD).

SEPA APPEAL

3. Review Standard. There are two reasons a DNS can be overturned to overturned: (1) there are unmitigated probable significant adverse environmental impacts; or (2) the SEPA responsible official has not undertaken an adequate review of environmental factors. Each grounds for reversal will be separately addressed below.

A. Probable Significant Adverse Environmental Impacts.

The primary relevant inquiry for purposes of assessing whether County staff correctly issued a DNS is whether the project as proposed has a probable significant environmental impact. *See* WAC 197-11-330(1)(b). WAC 197-11-782 defines "probable" as follows:

> *'Probable' means likely or reasonably likely to occur, as in 'a reasonable probability of more than a moderate effect on the quality of the environment' (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.*

If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there are no probable significant adverse environmental impacts. In the alternative, an environmental impact statement would be required for the project. In assessing the validity of a threshold determination, the determination made by the City's SEPA responsible official shall be entitled to substantial weight. WAC 197-11-680(3)(a)(viii). An appeal of an MDNS is judicially reviewed under the clearly erroneous standards. Under the clearly erroneous standard, the decision of the SEPA responsible official can only be overturned if, after reviewing the entire record, the decision maker is left with the definite and firm conviction that a mistake has been made. RMC 4-8-110-(E)(12)(b)(v). The procedural determination by the Environmental Review Committee or City staff shall carry substantial weight in any appeal proceeding. RMC 4-8-110(E)(12)(a).

B. Adequate Environmental Review

The second reason a DNS can be overturned is if the SEPA responsible official did not adequately review environmental impacts in reaching his threshold determination. The SEPA responsible official

must make a prima facie showing that he has based his determination upon information reasonably sufficient to evaluate the impacts of a proposal. WAC 197-11-335.

C. No Grounds for an EIS.

TPWAG has not demonstrated a need for additional SEPA mitigation, environmental review or the issuance of an environmental impact statement. All of the grounds for SEPA appeal are addressed in Finding of Fact No. 5. As determined in that finding, none of the impacts identified by TPWAG qualify as probable significant adverse environmental impacts and TPWAG has not identified an impact for which the SEPA responsible official did not have sufficient information to reasonably assess impacts.

D. Perimeter Landscaping.

MDNS Condition No. 6 is modified to only require 10 foot perimeter landscaping along the retaining walls that are over four feet in height, specifically in proximity to lots 40, 41, 46, 47, 80, 82, 83-90, 93 and 94.

The applicant argues that no perimeter buffering is required because the City's landscaping standards do not require buffering and that those standards should be determinative in assessing the need for landscaping. The applicant is correct up to a point. RCW 36.70B.030(3) and RCW 43.21C.240(2)(a) does allow a city to use its development standards as the exclusive source of mitigation for environmental impacts. However, RCW 43.21C.240(2)(a) provides that in order to use development regulations in this manner the City must make a determination in the course of permit review that the development standards in question are adequately addressed by the development regulations. RCW 43.21C.240(4) further clarifies that for development standards to be found to adequately mitigate impacts, imposition of the standards must either avoid or mitigate the impacts; or the legislative body of the city has determined that the development standard sets acceptable levels of impact.

Renton's landscaping standards do not adequately address all of the aesthetic impacts created by the proposal. As noted previously, one of the two ways that a development standard can be found to adequately address impacts is if the City Council intended the standard to set acceptable levels of impact. See RCW 43.21C.240(4)(b).The Renton City Council expressly determined that the landscaping standard would not set acceptable levels of aesthetic impact, stating the purpose clause of the landscaping standards that "*it is not the intent of these regulations that rigid and inflexible design standards be imposed, but rather that minimum standards be set.*"

The other, more difficult issue involved in ascertaining whether the landscaping standards would adequately address aesthetic impacts is if the standards actually mitigate the impacts. Given the subjectivity of aesthetic perimeter impacts, one would have to conclude that in the vast majority of

typical subdivisions the landscaping standards do set an adequate standard. In not imposing any perimeter landscaping requirements between single family residential uses, the City Council must have determined that for the typical subdivision, such landscaping is not necessary. However, the proposed subdivision is not typical. As determined in Finding of Fact No. 6, the proposal will involve up to 16.6 foot high retaining walls that will create a stone wall to the neighborhoods across from it, which in turn can be topped with 6 foot fences. The site visit revealed that no other homes in the vicinity have such retaining walls or similar edifices bordering on public roads. Consequently, the impacts of the subdivision are not typical and likely not the type of impact the City Council considered when it omitted any buffer requirements for adjoining residential uses. Additional mitigation through SEPA is well justified in this case to mitigate against the impact of retaining walls.

The City's environmental report also cites that buffering is necessary to off-set the impacts of the densities of the proposal, which are higher than adjoining densities. This does not serve as an adequate justification for buffering. Setting a threshold for adverse aesthetic impacts based upon a difference in density or lot sizes is a completely arbitrary action in the absence of any legislative guidance. The difference in density between the proposal and adjoining uses is not so high that reasonable minds would share the same opinion as to whether the difference is aesthetically adverse. Though both the surrounding areas and the subject are zoned R-8, the developed density of the proposal will not exceed 5.7 dwelling units per acre. Indeed, unlike the retaining walls of the project, differences in residential densities are something that one would reasonably anticipate the Council would have considered in adopting its landscaping standards, and it adopted no perimeter requirements between residential zoning districts with different densities, except as between multi-family and less intense residential uses. For these reasons, the comparatively higher density of the proposal does not create a probable significant adverse environmental impact.

Another issue with respect to the SEPA's mitigation measure is to ensure that the City has adopted a SEPA policy that requires the impact to be addressed. RCW 43.21C.060 requires that SEPA mitigation must be based upon policies adopted by the local government authority. Interestingly, the City hasn't adopted its development standards as part of its SEPA policies, so the purpose clause of the landscaping regulations, which promote aesthetic compatibility, can't be used. There are plenty of other SEPA policies that promote aesthetic compatibility. RMC 4-2-070(M)(2)(ii) provide that one of the goals of SEPA review is to assure aesthetically pleasing surroundings. The City's comprehensive plan is another adopted SEPA policy. One of its community design goals is to "raise the aesthetic quality of the city". Objective CD-M recognizes that well designed landscaping provides aesthetic appeal and makes an important contribution to the health, safety, economy and general welfare of the community. Policy CD-88 provides that street trees and landscaping should be required for new development to provide an attractive streetscape in areas subjected to a transition of land uses. All of these policies are served by the perimeter landscaping required by this decision, since such

landscaping will raise the aesthetic quality of the city, provide for aesthetic appeal and buffer against the transition from the higher density residential development and its associated retaining walls to the lower surrounding residential densities.

The applicants argue in their briefing that requiring perimeter landscaping would be unreasonable because homes would lose yard space. In the alternative, of course, the applicant may have to lose some lots. Given the judicial construction of "reasonable" in due process and takings cases, the loss of a few lots or yard space would not be considered unreasonable.

As a final matter, SEPA mitigation can only be used to impose mitigation against probable significant adverse environmental impacts. As determined in the Finding of Fact No. 5, the solid walls created by the higher portions of the retaining wall easily qualify. No reasonable minds could differ on the opinion that high retaining walls are at odds with the general design of the community and create a mass of rock or concrete wall that is aesthetically adverse. The remaining issue is how high the wall should be to be considered adverse. Again, reference to existing codes is useful as it provides an objective and consistent standard for application. Retaining walls fewer than four feet in height do not require building permit review. Consequently, it can be reasonably anticipated that decorative retaining walls under four feet may not be that uncommon, whereas property owners will only go through the time and expense of building permit review for higher walls when they are necessitated for stability as opposed to decorative purposes. A four feet height is also still low enough to retain the views of surrounding trees, vistas and other natural and landscaped features. For this reason, those portions of the proposal with retaining walls that exceed four feet in height shall be subject to the 10 foot wide perimeter landscaping requirement imposed in the MDNS.

E. Conclusion of Law 3(E) has been renumbered to Conclusion of Law No. 7.5 as directed by the Ruling on Reconsideration.

F. Loss of Recreational Use.

The appellants assert that the project site has been used as a recreational resource by the surrounding community for decades and that its loss is a probable significant adverse environmental impact. The loss of recreational use from the property is not an environmental impact of the proposal subject to SEPA review and mitigation. Even if it were, that loss does not result in any violation of the City's detailed park policies and regulations, compliance of which assures that development will not create demand upon park facilities that exceeds legislatively adopted level of service standards.

As a preliminary matter, it should be noted that this decision does not address the prescriptive rights claims made by the appellants to the project site. As ruled in Ex. AG, the Examiner has no authority to address the prescriptive easement claims asserted by the SEPA appellants. Practically speaking, this decision will not prejudice the appellants' prescriptive rights claims if the appellants diligently

pursue those claims in superior court, the proper forum for such a claim. Should the appellants actually succeed in persuading a court that the public has prescriptive rights to the public school property (which appears unlikely at this juncture), they could acquire injunctive or other judicial relief to prevent development of the proposal.

No additional SEPA review or mitigation is merited on the recreational use issue because the loss of that use cannot be considered an impact of the proposal. In the absence of any prescriptive rights to the project site, project opponents are left with the argument that the applicant should fund further environmental review or provide for additional mitigation to compensate for the fact that either (1) the applicant was benevolent enough to allow the public to use its property; or (2) the public repeatedly trespassed on the applicant's property. From an equitable standpoint, such a position borders on the absurd. More importantly, the applicant could prevent the public from using its property at any time, with or without the proposal. For this reason, the loss of recreational use should not be considered an impact of the proposal for purposes of environmental review.

Even if loss of the recreational use of the site could be legitimately considered an environmental impact for purposes of SEPA, its loss would not qualify as a probable significant adverse environmental impact. The City's comprehensive plan, park impact fees and open space requirements are all designed to assure that each developer is required to provide its proportionate share contribution to the park needs of the city and that the park needs of the public will be met as development progresses. The applicant's proposal is consistent and compliant with all of these requirements. In point of fact the applicant will be required to pay park impact fees at the time of building permit issuance. The applicant is also providing for 1.2 acres of open space, even though no open space is required for subdivisions in the R-8 zone. As would be expected, none of the City's park policies or regulations penalizes a developer for withdrawing the ability of the public to use or trespass upon its property. Since the applicant is acting fully within the requirements of the City's detailed park policies and regulations, its proposal cannot be considered to create adverse impacts to the City's (i.e. public's) parks and recreational system.

PRELIMINARY PLAT

6. Review Criteria. Chapter 4-7 RMC governs the criteria for preliminary review. Applicable standards are quoted below in italics and applied through corresponding conclusions of law.

RMC 4-7-080(B): *A subdivision shall be consistent with the following principles of acceptability:*

1. Legal Lots: Create legal building sites which comply with all provisions of the City Zoning Code.

2. Access: Establish access to a public road for each segregated parcel.

3. Physical Characteristics: Have suitable physical characteristics. A proposed plat may be denied because of flood, inundation, or wetland conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.

4. Drainage: Make adequate provision for drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes.

RMC 4-4-080(I)(7):

a. Benefits of: Joint use driveways reduce the number of curb cuts along individual streets and thereby improve safety and reduce congestion while providing for additional on-street parking opportunities. Joint use driveways should be encouraged when feasible and appropriate. (Ord. 4517, 5-8-1995)

b. Where Permitted: Adjoining commercial or industrial uses may utilize a joint use driveway where such joint use driveway reduces the total number of driveways entering the street network, subject to the approval of the Department of Community and Economic Development. Joint use driveways must be created upon the common property line of the properties served or through the granting of a permanent access easement when said driveway does not exist upon a common property line. Joint use access to the driveway shall be assured by easement or other legal form acceptable to the City.

7. As to compliance with the Zoning Code, Finding I(2) of the staff report in the portions related to density, lot dimensions, setbacks and building standards (Pages 12-13) are adopted by reference as if set forth in full, with all associated recommended conditions of approval adopted by this decision as well.

As depicted in the plat map, Staff Report Ex. 2, most of the lots will directly access a public Road (Road A, SE 18th Street or 124th Place SE). As noted in Finding of Fact 6.G, shared driveways are proposed for Lots 12-14, Lots 15-17, Lots 38-40 and Lots 79-81. Staff additionally suggests Lot 11 and Lots 78 take access from the shared driveway. There are no topographical or critical areas issues to preclude these three lots from having shared access. The shared access would reduce the number of curb cuts at the entrance of the plat at 124th Place SE and along the cul de sac at the end of the same street. Potential vehicle and pedestrian conflicts would be lessened by consolidating driveways. However, the applicant testified use of the shared driveway for Lot 11 is problematic because the driveway would be at an angle to the roadway which would also change the design of the house to allow side loading of the garage. The applicant objected to the inclusion of Lot 78 in a shared driveway. There appear to be no material differences between Lots 78 and 81 in terms of orientation or width. As these lots are very near to the subdivision entrance, limiting potential vehicle and pedestrian conflicts is desirable. Though a change to the design of the house on Lot 11 is not an unreasonable accommodation to allow for vehicular and pedestrian safety at the cul de sac, the

driveway for Lot 11 would be at an undesirable angle to the shared driveway. The cul de sac serves a limited number of houses. In this instance, the safety effect of removing one driveway access to a cul de sac does not outweigh the impact to Lot 11 caused by the creation of off kilter driveway. The approval will be conditioned to require the inclusion of Lots 12-14, Lots 15-17, Lots 38-40 and Lots 78-81 in shared driveways.

As determined in Finding of Fact No. 5 and 6, the project is adequately designed to prevent any impacts to critical areas and will not cause flooding problems. As determined in Finding of Fact No. 6, the proposal provides for adequate public facilities.

7.5 Retaining Wall Height. The six-foot retaining wall height limitation recommended by staff will not be adopted. Renton does not have any standards imposing height limits on retaining walls outside of setback areas. There is nothing in the record that establishes the potential for any adverse impacts other than aesthetic, and those impacts will be adequately addressed by the staff's recommended landscape perimeter.

The retaining wall condition presents two code interpretation issues: (1) whether the City's fence and hedge regulation (RMC 10-4-040) applies to retaining walls, and (2) if RMC 10-4-040 does apply, whether it imposes a six foot height limit on retaining walls. As to the first issue, RMC 10-4-040 probably does apply to retaining walls. RMC 4-4-040(A) provides that the purpose of RMC 4-4-050 is to regulate the material and height of "fences and hedges." "Fence" is not defined in the RMC. However, walls are addressed throughout RMC 4-4-040. Most pertinent, RMC 4-4-040(C)(1) provides in relevant part that, "In cases where a wall is used instead of a fence, height shall be measured from the top surface of the wall to the ground on the high side of the wall." This sentence strongly suggests that the wall in question can include retaining walls, since the sentence acknowledges that one side of the wall can be at a higher grade than the other. Retaining walls that project above the higher grade would meet this definition. The applicant argues that this reference to "wall" as well as others pertains to "European or California-style stone walls." Nothing in the language of RMC 4-4-040 suggests that walls be limited to stone walls.

In addition to providing some clarity on the applicability of RMC 4-4-040 to retaining walls, RMC 4-4-040(C)(1) also establishes that retaining walls that do not project past the higher grade have a height of zero feet, which is below all the height limits set for walls by RMC 4-4-040. The sentence clearly states that retaining wall height is to be measured from the "high side of the wall", which would be zero in the case of the retaining walls proposed by the applicant. This result makes sense in light of the other limitation of RMC 4-4-040, that it applies only "in cases where walls are used instead of a fence." If a retaining wall does not extend above the higher grade, it doesn't take the place of a fence and hence is not subject to the height limit. In short, retaining walls that only serve to retain soil, as proposed by the applicant, are not subject to the height limits of RMC 4-4-040.

Practically speaking, this means that RMC 4-4-040 doesn't apply to retaining walls solely used to stabilize grade separations, since no other provisions in RMC 4-4-040 apply as well.

Since the six foot height limit is not required RMC 4-4-040, staff would have to find some other code provision to require the fence. Plat criteria requiring conformance to the comprehensive plan, see RMC 4-7-080(I)(1), include the policies addressing aesthetic impacts identified in COL No. 5.A.1. As determined in Finding of Fact No.6.C, the aesthetic impacts of the retaining walls can be fully mitigated by perimeter landscaping. Staff acknowledged as much at page 13 of the staff report. Therefore, the record contains no adequate justification for a limitation on retaining wall height.

RMC 4-7-080(I)(1): ...*The Hearing Examiner shall assure conformance with the general purposes of the Comprehensive Plan and adopted standards...*

8. The proposed preliminary play is consistent with the Renton Comprehensive Plan as outlined in Finding I(1) of the staff report, which is incorporated by this reference as if set forth in full.

RMC 4-7-120(A): *No plan for the replatting, subdivision, or dedication of any areas shall be approved by the Hearing Examiner unless the streets shown therein are connected by surfaced road or street (according to City specifications) to an existing street or highway.*

9. As shown in Staff Report Ex. 2, the internal road system connects to SE 18th Street and 124th Place SE, both public roads.

RMC 4-7-120(B): *The location of all streets shall conform to any adopted plans for streets in the City.*

10. The City's adopted street plans are not addressed in the staff report or anywhere else in the administrative record. However, the proposed internal road system extends two existing stub roads, SE 18th Street and 124th Place SE. Both extensions will be constructed to City road standards. Consequently, the criterion above is construed as satisfied by the proposal.

RMC 4-7-120(C): *If a subdivision is located in the area of an officially designed [sic] trail, provisions shall be made for reservation of the right-of-way or for easements to the City for trail purposes.*

11. According to the Renton Trails and Bikeways Map (Exhibit 20) a pedestrian trail is designated within the Seattle Pipeline abutting the site. The applicant would be required to obtain right-of-way or an access easement across the pipeline for secondary access via 124th Place SE (see Finding 35.6, Streets). In addition, the applicant would be required to provide a safe crossing for the

designated trail across the extension of 124th Place SE. As a condition of approval, the applicant shall submit a revised plat plan depicting a safe pedestrian crossing, across the 124th Place SE extension, for the Seattle Waterline Pedestrian Trail.

RMC 4-7-130(C): *A plat, short plat, subdivision or dedication shall be prepared in conformance with the following provisions:*

1. Land Unsuitable for Subdivision: Land which is found to be unsuitable for subdivision includes land with features likely to be harmful to the safety and general health of the future residents (such as lands adversely affected by flooding, steep slopes, or rock formations). Land which the Department or the Hearing Examiner considers inappropriate for subdivision shall not be subdivided unless adequate safeguards are provided against these adverse conditions.

> *a. Flooding/Inundation: If any portion of the land within the boundary of a preliminary plat is subject to flooding or inundation, that portion of the subdivision must have the approval of the State according to chapter 86.16 RCW before the Department and the Hearing Examiner shall consider such subdivision.*
>
> *b. Steep Slopes: A plat, short plat, subdivision or dedication which would result in the creation of a lot or lots that primarily have slopes forty percent (40%) or greater as measured per RMC 4-3-050J1a, without adequate area at lesser slopes upon which development may occur, shall not be approved.*

...

3. Land Clearing and Tree Retention: Shall comply with RMC 4-4-130, Tree Retention and Land Clearing Regulations.

4. Streams:

> *a. Preservation: Every reasonable effort shall be made to preserve existing streams, bodies of water, and wetland areas.*
>
> *b. Method: If a stream passes through any of the subject property, a plan shall be presented which indicates how the stream will be preserved. The methodologies used should include an overflow area, and an attempt to minimize the disturbance of the natural channel and stream bed.*
>
> *c. Culverting: The piping or tunneling of water shall be discouraged and allowed only when going under streets.*

d. Clean Water: Every effort shall be made to keep all streams and bodies of water clear of debris and pollutants.

12. The land is suitable for a subdivision. As determined in Finding of Fact 5.B, the stormwater design assures that it will not contribute to flooding and all critical areas will be protected. As determined in Finding of Fact No. 5.B, no lots with primarily 40% slopes will be created. No piping or tunneling of streams is proposed. Trees will be retained as required by RMC 4-4-130 as determined in Finding of Fact No. 5.A.

RMC 4-7-140: *Approval of all subdivisions located in either single family residential or multi-family residential zones as defined in the Zoning Code shall be contingent upon the subdivider's dedication of land or providing fees in lieu of dedication to the City, all as necessary to mitigate the adverse effects of development upon the existing park and recreation service levels. The requirements and procedures for this mitigation shall be per the City of Renton Parks Mitigation Resolution.*

13. City ordinances require the payment of park impact fees prior to building permit issuance. See also the discussion on loss of recreational use in Conclusion of Law 3.F above.

RMC 4-7-150(A): *The proposed street system shall extend and create connections between existing streets unless otherwise approved by the Public Works Department. Prior to approving a street system that does not extend or connect, the Reviewing Official shall find that such exception shall meet the requirements of subsection E3 of this Section. The roadway classifications shall be as defined and designated by the Department.*

14. As shown in Staff Report Ex. 2, the proposed internal roads extend two existing stubs, SE 18th Street and 124th Place SE. The internal Road A creates a loop connection between the two public streets which did not exist previously.

RMC 4-7-150(B): *All proposed street names shall be approved by the City.*

15. As conditioned.

RMC 4-7-150(C): *Streets intersecting with existing or proposed public highways, major or secondary arterials shall be held to a minimum.*

16. None of the proposed streets intersect with a public highway or arterial.

RMC 4-7-150(D): *The alignment of all streets shall be reviewed and approved by the Public Works Department. The street standards set by RMC 4-6-060 shall apply unless otherwise approved. Street alignment offsets of less than one hundred twenty five feet (125') are not desirable, but may be*

approved by the Department upon a showing of need but only after provision of all necessary safety measures.

17. As determined in Finding of Fact 6, the Public Works Department has reviewed and approved the adequacy of streets, which includes compliance with applicable street standards.

RMC 4-7-150(E):

1. Grid: A grid street pattern shall be used to connect existing and new development and shall be the predominant street pattern in any subdivision permitted by this Section.

2. Linkages: Linkages, including streets, sidewalks, pedestrian or bike paths, shall be provided within and between neighborhoods when they can create a continuous and interconnected network of roads and pathways. Implementation of this requirement shall comply with Comprehensive Plan Transportation Element Objective T-A and Policies T-9 through T-16 and Community Design Element, Objective CD-M and Policies CD-50 and CD-60.

3. Exceptions:

a. The grid pattern may be adjusted to a "flexible grid" by reducing the number of linkages or the alignment between roads, where the following factors are present on site:

i. Infeasible due to topographical/environmental constraints; and/or

ii. Substantial improvements are existing.

4. Connections: Prior to adoption of a complete grid street plan, reasonable connections that link existing portions of the grid system shall be made. At a minimum, stub streets shall be required within subdivisions to allow future connectivity.

5. Alley Access: Alley access is the preferred street pattern except for properties in the Residential Low Density land use designation. The Residential Low Density land use designation includes the RC, R-1, and R-4 zones. Prior to approval of a plat without alley access, the Reviewing Official shall evaluate an alley layout and determine that the use of alley(s) is not feasible...

6. Alternative Configurations: Offset or loop roads are the preferred alternative configurations.

7. Cul-de-Sac Streets: Cul-de-sac streets may only be permitted by the Reviewing Official where due to demonstrable physical constraints no future connection to a larger street pattern is physically possible.

18. As shown in Staff Report Ex. 2, the proposed street system contributes to the grid system by creating loop access which did not previously exist. Both of the intersecting public streets are currently stub roads. Alley access is not required because the proposed density does not meet the 6 dwelling unit/acre threshold. The internal roads are looped as encouraged by the criterion above. The cul de sacs proposed cannot be extended to connect the road network because of the presence of two pipeline easements. The criterion is met.

RMC 4-7-150(F): *All adjacent rights-of-way and new rights-of-way dedicated as part of the plat, including streets, roads, and alleys, shall be graded to their full width and the pavement and sidewalks shall be constructed as specified in the street standards or deferred by the Planning/Building/Public Works Administrator or his/her designee.*

19. As proposed all roads will meet City street profile standards for road with and frontage improvements.

RMC 4-7-150(G): *Streets that may be extended in the event of future adjacent platting shall be required to be dedicated to the plat boundary line. Extensions of greater depth than an average lot shall be improved with temporary turnarounds. Dedication of a full-width boundary street shall be required in certain instances to facilitate future development.*

20. As shown in Ex. 2 to the Staff Report, the proposed roads may not be extended due to the presence of pipeline easements. The subject is surrounded on all sides by existing residential development.

RMC 4-7-170(A): *Insofar as practical, side lot lines shall be at right angles to street lines or radial to curved street lines.*

21. As depicted in Staff Report Ex. 2, the side lines are in conformance with the requirement quoted above.

RMC 4-7-170(B): *Each lot must have access to a public street or road. Access may be by private access easement street per the requirements of the street standards.*

22. As previously determined and conditioned, each lot has access to a public street.

RMC 4-7-170(C): *The size, shape, and orientation of lots shall meet the minimum area and width requirements of the applicable zoning classification and shall be appropriate for the type of development and use contemplated. Further subdivision of lots within a plat approved through the provisions of this Chapter must be consistent with the then-current applicable maximum density requirement as measured within the plat as a whole.*

23. As previously determined and as conditioned, the proposed lots comply with the zoning standards of the R-8 zone, which includes area, width and density.

RMC 4-7-170(D): *Width between side lot lines at their foremost points (i.e., the points where the side lot lines intersect with the street right-of-way line) shall not be less than eighty percent (80%) of the required lot width except in the cases of (1) pipestem lots, which shall have a minimum width of twenty feet (20') and (2) lots on a street curve or the turning circle of cul-de-sac (radial lots), which shall be a minimum of thirty five feet (35').*

24. The applicant has proposed several lots including Lots 14, 15 and 38 which do not meet the minimum frontage width requirement. As discussed below in Conclusion of Law 27, each of these lots must be eliminated or revised to meet the minimum frontage width requirements. Or, as discussed in Conclusion of Law 5 above, the applicant may also submit an alternative plat plan which includes a combination of all lots fronting onto a public street meeting minimum lot widths and those portions of the lots now proposed for shared driveway/access easements.

RMC 4-7-170(E): *No residentially zoned lot shall have a depth-to-width ratio greater than four-to-one (4:1).*

25. As conditioned, all pipestem lots will be eliminated or revised to meet minimum lot width requirements which will bring all of the lots into compliance with this criterion.

RMC 4-7-170(F): *All lot corners at intersections of dedicated public rights-of-way, except alleys, shall have minimum radius of fifteen feet (15').*

26. As proposed all lots meet this criterion.

RMC 4-7-170(G): *Pipestem lots may be permitted for new plats to achieve the minimum density within the Zoning Code when there is no other feasible alternative to achieving the minimum density.*

Minimum Lot Size and Pipestem Width and Length: The pipestem shall not exceed one hundred fifty feet (150') in length and not be less than twenty feet (20') in width. The portion of the lot narrower than eighty percent (80%) of the minimum permitted width shall not be used for lot area calculations or for the measurement of required front yard setbacks. Land area included in private access easements shall not be included in lot area calculations. Pipestem lots shall not abut one another.

27. The proposal exceeds the minimum density of 4.0 dwelling units per acre by 1.7 dwelling units per acre and therefore pipestem lots are prohibited. The applicant has proposed several pipestem lots including Lots 12, 14, 15, 17, 38, 40 and 79. As a condition of approval, each of these lots must be eliminated or revised to meet the minimum frontage width requirements. As an alternative, the applicant may also submit an alternative plat plan which includes a combination of

all lots fronting onto a public street meeting minimum lot widths and those portions of the lots now proposed for shared driveway/access easements as discussed above in Conclusion of Law 5.

RMC 4-7-190(A): *Easements may be required for the maintenance and operation of utilities as specified by the Department.*

28. As conditioned.

RMC 4-7-190(B): *Due regard shall be shown to all natural features such as large trees, watercourses, and similar community assets. Such natural features should be preserved, thereby adding attractiveness and value to the property.*

29. Trees will be retained as required by City code as determined in Finding of Fact No. 5. There are no other natural features that need preservation as contemplated in the criterion quoted above.

RMC 4-7-200(A): *Unless septic tanks are specifically approved by the Public Works Department and the King County Health Department, sanitary sewers shall be provided by the developer at no cost to the City and designed in accordance with City standards. Side sewer lines shall be installed eight feet (8') into each lot if sanitary sewer mains are available, or provided with the subdivision development.*

30. As conditioned.

RMC 4-7-200(B): *An adequate drainage system shall be provided for the proper drainage of all surface water. Cross drains shall be provided to accommodate all natural water flow and shall be of sufficient length to permit full-width roadway and required slopes. The drainage system shall be designed per the requirements of RMC 4-6-030, Drainage (Surface Water) Standards. The drainage system shall include detention capacity for the new street areas. Residential plats shall also include detention capacity for future development of the lots. Water quality features shall also be designed to provide capacity for the new street paving for the plat.*

33. The proposal provides for adequate drainage that is in conformance with applicable City drainage standards as determined in Findings of Fact No. 5 and 6. The City's stormwater standards, which are incorporated into the technical information report and will be further implemented during civil plan review, ensure compliance with all of the standards in the criterion quoted above.

RMC 4-7-200(C): *The water distribution system including the locations of fire hydrants shall be designed and installed in accordance with City standards as defined by the Department and Fire Department requirements.*

31. Compliance with City water system design standards is assured during final plat review.

RMC 4-7-200(D): *All utilities designed to serve the subdivision shall be placed underground. Any utilities installed in the parking strip shall be placed in such a manner and depth to permit the planting of trees. Those utilities to be located beneath paved surfaces shall be installed, including all service connections, as approved by the Department. Such installation shall be completed and approved prior to the application of any surface material. Easements may be required for the maintenance and operation of utilities as specified by the Department.*

32. All utilities including the stormwater vault are proposed to be placed underground. As conditioned, utility installation will be inspected and approved prior to paving of surface materials above the utilities.

RMC 4-7-200(E): *Any cable TV conduits shall be undergrounded at the same time as other basic utilities are installed to serve each lot. Conduit for service connections shall be laid to each lot line by subdivider as to obviate the necessity for disturbing the street area, including sidewalks, or alley improvements when such service connections are extended to serve any building. The cost of trenching, conduit, pedestals and/or vaults and laterals as well as easements therefore required to bring service to the development shall be borne by the developer and/or land owner. The subdivider shall be responsible only for conduit to serve his development. Conduit ends shall be elbowed to final ground elevation and capped. The cable TV company shall provide maps and specifications to the subdivider and shall inspect the conduit and certify to the City that it is properly installed.*

33. As conditioned.

RMC 4-7-210:

A. MONUMENTS:

Concrete permanent control monuments shall be established at each and every controlling corner of the subdivision. Interior monuments shall be located as determined by the Department. All surveys shall be per the City of Renton surveying standards.

B. SURVEY:

All other lot corners shall be marked per the City surveying standards.

C. STREET SIGNS:

The subdivider shall install all street name signs necessary in the subdivision.

34. As conditioned.

VI. DECISION

The proposed 96-lot preliminary plat as depicted in Ex. 3[3] to the staff report, and critical area exemption as described in the findings of this decision, are approved subject to the following conditions:

1. The applicant shall comply with the mitigation measures issued as part of the Determination of Non-Significance Mitigated, dated September 22, 2014 except as modified below:

    a. MDNS Condition 1 shall be revised as follows:

    All earthwork performed, implemented by the applicant, shall be consistent with the recommendations of the geotechnical report, prepared by Associated Earth Sciences, Inc., dated September 28, 2012 or consistent with the recommendations of the final City-approved geotechnical report.

    b. MDNS Condition 6 shall be stricken and replaced with the following [as modified by the Ruling on Reconsideration]:

    The applicant shall revise its landscaping plan to provide for a 10 foot wide on-site street frontage landscape strip as required by RMC 4-4-070(F)(1) for all lots and a 10 foot wide, site obscuring perimeter landscaping adjacent to areas where the retaining walls are four or more feet in height. Landscaping at maturity must exceed the height of the adjacent retaining wall. The final detailed landscape plan shall be submitted to and approved by the Current Planning Project Manager prior to construction permit approval. Such landscaping shall include a mixture of trees, shrubs, and groundcover as approved by the Department of Community and Economic Development.

2. The applicant shall be required to demonstrate compliance with the minimum 50-foot lot width requirement for all lots with less than 50 feet in width at the foremost points (where the side lot lines intersect with the street right-of-way line) pursuant to RMC 4-11-120. The average distance between the side lines connecting front and rear lot lines shall be submitted to the Current Planning Project Manager prior to construction permit approval.

3. Condition No. 3 has been deleted as directed in the Ruling on Reconsideration.

---

[3] All references to the plat map in this decision in the findings and conclusions have been to Exhibit 2 of the staff report. Those references are accurate. However, the plat approved by this decision is depicted in Exhibit 3 of the staff report, which is the 96 lot subdivision as opposed to the 97 lot subdivision.

4. The applicant shall be required to submit a revised plat and landscaping plan, which are elements of the City's required construction plan set, depicting curb bulbouts at street intersections where on-street parking is located or calling for no curb bulbouts and installation of "no parking" designations where street parking is prohibited at street intersections. The revised plat and landscaping plan shall be submitted to and approved by the Current Planning Project Manager prior to construction permit approval.

5. The applicant shall eliminate individual access directly from internal public streets for those lots abutting private streets and/or shared driveway access easements, specifically Lots 12-14, Lots 15-17, Lots 38-40 and Lots 78-81 in shared driveways. Said lots shall be required to take access from the abutting private street and/or access easement and shall not exceed access thresholds pursuant to RMC 4-6-060.J and K. Lot 11 may access the public street directly. The revised plat plan shall be submitted to, and approved by, the Current Planning Project Manager prior to construction permit approval. Furthermore, the access restriction for such lots is required to be noted on the face of the Final Plat prior to recording.

6. The applicant shall revise the proposed mitigation plan to depict all retaining walls on site, including lock & load walls on the north and east sides of Wetlands B and C. The applicant shall also identify if proposed walls are anticipated to impact critical area buffers and provide appropriate mitigation for such impacts. A Final Mitigation Plan, pursuant to RMC 4-8-120.W, shall be submitted to, and approved by, the Current Planning Project Manager prior to construction permit approval.

7. The temporary buffer impacts consisting of minor intrusions or disturbance from construction activities shall be restored with appropriate grading, soil amendments, and the planting of native species to the satisfaction of the Current Planning Project Manager. The revised mitigation plan shall be submitted to, and approved by, the Current Planning Project Manager prior to construction permit approval.

8. The existing wetland mitigation plan already assures that 1,331 square feet of additional wetland buffer area is being provided to mitigate for both existing buffer impacts to Wetland E that are not associated with the Plat, as well as the loss of 14 square feet of the Wetland E buffer which loss is associated with the extension of SE 18th Street. To provide an additional offset for the impacts resulting from the requested exemption associated with the fill of 14 square feet of buffer to extend SE 18th Street. The applicant has agreed to provide and shall provide enhancement to the Wetland 'E' buffer immediately abutting SE 18th Street, as well as enhanced plantings adjoining that buffer area within Tract M. A revised mitigation plan shall be submitted to, and approved by, the Current Planning Project Manager prior to construction permit approval.

9. The applicant shall be required to establish a Native Growth Protection Easement over those parts of the site encompassing wetlands and their associated buffers and place fencing and signage along the outer buffer edge prior to Final Plat approval.

10. The applicant shall be required to submit a fill source statement, if fill materials are brought to the site, in order to the City to ensure only clean fill is imported prior to construction.

11. The applicant shall provide a final Tree Retention Plan, complying with the 30% tree retention SEPA mitigation measure while demonstrating proposed retaining walls would not impact trees proposed for retention. The Final Tree Retention Plan shall be submitted to, and approved by, the Current Planning Project Manager prior to construction permit approval.

12. The applicant shall submit a revised plat plan, which is an element of the City's required construction plan set, depicting a safe pedestrian crossing, across the 124th Place SE extension, for the Seattle Waterline Pedestrian Trail. The revised plat plan, as part of the construction plan set, shall be submitted to, and approved by the Current Planning Project Manager, Community Services Department, and the Transportation Department prior to construction permit approval.

13. The applicant shall be required to obtain right-of-way or a public access easement through the Cedar River Pipeline, for the extension of 124th Place SE, to the satisfaction of the Plan Reviewer prior to construction permit approval.

14. Pedestrian lighting shall be depicted on the lighting plan at the entrances of Tracts C and E (from the proposed right-of-way). The lighting plan shall be submitted to, and approved by, the Current Planning Project Manager and the Plan Reviewer prior to construction permit approval.

15. The Preliminary Plat plan shall be revised so that no more than 4 lots may gain access via a shared driveway and that at least one such lot shall meet minimum lot width requirements along a street frontage pursuant to RMC 4-7-170.D (a minimum of 80% of the required lot width/40 feet or 35 feet along a street curve). The lot(s) which provides physical frontage along the street shall only be allowed vehicular access from the shared private driveway. In order to provide shared access, Lots 14, 17 and 38 shall be widened to 35 feet and take primary access from the shared driveway. The revised plat plan shall be submitted to and approved by the Current Planning Project Manager prior to construction permit approval.

16. The plat plan shall be revised so that all lots have no less than a 40-foot lot width where side lot lines intersect with the street right of way or for radial lots be a minimum of 35 feet in width. Specifically, proposed Lots 14, 17, and 38 would be required to be widened to 35 feet

in order to comply with the condition. The revised plat plan shall be submitted to and approved by the Current Planning Project Manager prior to construction permit approval.

17. The applicant shall submit a revised plat plan depicting the elimination of all pipestem lots (lots which are less than 40 feet in width where the side lot lines intersect with the street right-of-way or for radial lots are less than 35 feet) within the subdivision. Specifically, proposed Lots 12, 14, 15, 17, 38, 40, and 79 would be required to be eliminated or revised to meet minimum frontage width requirements. The applicant may also submit an alternative plat plan which includes a combination of all lots fronting onto a public street meeting minimum lot widths and those portions of the lots now proposed for shared driveway/access easements could be placed in Shared Driveway Tracts with easements placed over them pursuant to RMC 4-6-060, Street Standards. The revised plat plan shall be submitted to and approved by the Current Planning Project Manager prior to construction permit approval.

18. Any proposal to convert the Stormwater vault within Tract A to a Stormwater detention pond be considered a Major Plat Amendment subject to the requirements outlined under RMC 4-7-080M.2.

19. The applicant shall be required to create a homeowners' association and maintenance agreement(s) for the shared utilities, landscape areas and maintenance and responsibilities for all shared improvements of this development. A draft of the document(s) shall be submitted to Current Planning Project Manager for review and approval by the City Attorney and Property Services section prior to the recording of the final plat.

20. The applicant shall submit the results of the Phase 1 Environmental Site Assessment to the City for review. Appropriate mitigation, if any, shall be completed prior to issuance of building permits.

21. All road names shall be approved by the City.

22. Easements may be required for the maintenance and operation of utilities as specified by the Department.

23. Sanitary sewers shall be provided by the developer at no cost to the City and designed in accordance with City standards. Side sewer lines shall be installed eight feet (8') into each lot if sanitary sewer mains are available, or provided with the subdivision development.

24. Any cable TV conduits shall be undergrounded at the same time as other basic utilities are installed to serve each lot. Conduit for service connections shall be laid to each lot line.

25. Concrete permanent control monuments shall be established at each and every controlling corner of the subdivision. Interior monuments shall be located as determined by the

Department. All surveys shall be per the City of Renton surveying standards. All other lot corners shall be marked per the City surveying standards. The subdivider shall install all street name signs necessary in the subdivision.

26. [This condition added as directed by the Ruling on Reconsideration to address Roof run-off]. Roof run-off that impacts wetlands shall not be allowed mix with polluting surfaces. Category 2 wetlands may not be structurally or hydrologically engineered for runoff quantity or quality control as required by KCSWDM Reference 5. City staff shall require design adjustments as authorized by KCSWDM 1.2 to the extent necessary to prevent adverse impacts to wetland hydrology caused by roof runoff.

DATED this 26th day of January, 2015.

Phil A. Olbrechts

City of Renton Hearing Examiner

APPEAL RIGHTS AND VALUATION NOTICES

RMC 4-8-080 provides that the final decision of the hearing examiner is subject to appeal to the Renton City Council. RMC 4-8-110(E)(14) requires appeals of the hearing examiner's decision to be filed within fourteen (14) calendar days from the date of the hearing examiner's decision. There is no right to reconsideration as the decision has already been subject to reconsideration. Additional information regarding the appeal process may be obtained from the City Clerk's Office, Renton City Hall – 7th floor, (425) 430-6510.

The City Council's jurisdiction to hear SEPA appeals is contested by the applicant. The City Council shall determine whether it has any jurisdiction to hear an appeal of the SEPA portion of this decision.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

ATTACHMENT A

The Reserve at Tiffany Park Preliminary Plat and SEPA Appeals
(LUA13-001572, ECF, PP, CAE)

TESTIMONY SUMMARY

SEPA Appeal #1 – Applicants

Applicant Testimony

Ms. Nancy Rogers, applicant's Attorney, stated the applicant had filed an appeal to the City's SEPA MDNS based on three issues. They felt the geotechnical report should be updated to reference the current geotechnical report. They have issues with Conditions #3 and #6. They believe it's better for the project and environment to have Henley comply with a tree protection plan and have Henley's arborist work with the City's arborist to assure that as many trees as possible are preserved. They requested amendments to Condition 3. In addition, Condition 6 was imposed in the MDNS. It would impose a 15-50 foot perimeter buffer around the entire site. This is overreaching and unduly burdensome. The applicant is going above and beyond to provide buffering, which is not necessary because they are proposing single family uses next to single family uses. There are two rights of ways along substantial portions of the borders, the Mercer Island Water Pipeline and the Cedar River Water Pipeline. One is 60 feet wide; the other is 100 feet wide. There is already substantial buffering between existing uses and the project site.

They have an analysis responding to the City staff SEPA analysis filed last Friday (Exhibit K11). Ms. Rogers summarized this analysis. They appealed Condition #1. Staff felt that Condition #1 would be acceptable if they amended the condition to include compliance with the revised geotechnical report. The applicant agrees.

With respect the appeal to Conditions #3 for tree preservation and #6 for the proposed perimeter buffer, mitigation conditions under SEPA are subject to state and federal law, statutory and case law that establish a nexus of rough proportionality. That nexus is required to be shown by the City prior to imposition of these mitigation conditions. Case law dealing with the imposition of buffers had held that buffers need to be imposed when two very dissimilar uses are proposed adjacent to each other. That is not the case here.

With respect to Condition #3, the scope of that condition has morphed from the SEPA MDNS to the staff's current opinion. The applicant appealed this condition to require compliance with the applicant's tree protection plan rather than the more general requirement that they comply with relevant City codes. Staff is requiring 30% retention of trees rather than the Code requirement that

allows for replacement of trees through mitigation (RMC 4-4-130(H)(1)(e)). The condition is overreaching and overly burdensome. The City has failed to identify an adverse significant environmental impact related to tree preservation in the applicant's proposal. They are intending to preserve 30% of the trees. The developer needs to be able to replace trees that might be inadvertently damaged during construction rather than complying to a hard set retention percentage. They aren't intending to clear cut. They plan to protect the 30% of the trees. A few extra might come down through inadvertent damage. If so, those will be properly mitigated.

With respect to Condition #6, the perimeter buffer, as stated in the original MDNS condition it was a "minimum 15 foot buffer" which became 15-50 feet in width around the entire perimeter. There is no significant environmental impact here and the City is not entitled to impose mitigation here. There is no legal authority or justification by the City to require Henley to protect one use from another when the use is the same. The neighboring property owners could plant trees in their own yards.

As designed by Henley, the project already minimizes visual impact to neighboring uses in ways that are not required by the code. The code does not impose a perimeter buffer of any sort on a single family project like this. The majority of this site includes a perimeter buffer of 10-15 feet. There is more on critical areas tracts. The average buffer width is 55 feet. In addition, they have the two pipeline rights of ways, which are 60 feet and 100 feet wide. Adding in the pipelines, the average buffer goes up to 100 feet between homes from this project and adjacent homes. This is well outside of rough proportionality.

Mr. Barry Talkington is a civil engineer with Barghausen Consulting Engineers. Mr. Talkington described his education and qualifications. He prepares designs and layouts for single family projects. He designs roads, infrastructure, storm ponds, etc. He's prepared about 50 preliminary plats. It is typical for him to design a preliminary plat and then start into more detailed engineering design. They have prepared preliminary and final grading plans. Ms. Rogers presented Exhibit A-11, the ultimate plat layout. Mr. Talkington described the exhibit, the 96-lot version of the plat. There was an earlier version with more lots but they removed one to meet the 30% tree retention requirement. They eliminated Lot 1 from the original submittal.

In response to Ms. Rogers, Mr. Talkington described the various perimeter buffers, ranging including 50 feet in Tracts B and M and near Lots 13 and 14, the buffer is 15 foot wide. They have a 10 foot buffer that increase to nearly 80 feet by Lot 19 by the Mercer Island Pipeline. The minimum proposed buffer is 10 feet. By Tract G, the buffer is 100 feet. The Mercer Island Pipeline is 60 feet wide. The minimum setback along this area is 70 feet. Some lots do touch the property boundary, though that is adjacent to the 100 foot wide Cedar River Pipeline. There is additional greenspace in Tract H, G and J. In some places the buffer goes from 15 feet to 200 feet. The average buffer width is approximately 50 feet. With the pipeline areas, the average buffer width is over 100 feet. Only six

lots touch the perimeter of the property, all along the Cedar River Pipeline. In his opinion, the project does not result in a significant adverse aesthetic impact to the neighbors.

With respect to retaining walls, Mr. Talkington stated retaining walls are not purely cosmetic, though they can be. The purpose is to shorten the distance needed for a grade transition. There is grading involved in nearly all projects in the Pacific Northwest. Grading is accomplished via slopes or retaining walls. To create a hypothetical lot, either grade more land or build a wall along the edge and grade less. Lots with significant trees were designed with retaining walls to retain more trees. A building permit is required for a wall of 4 feet high or greater. Mr. Talkington has prepared building permit applications for this project and the associated grading plans which will be submitted today. Ms. Rogers asked about Exhibit K6, related to the grading plans. Ms. Rocale Timmons asked if this was the Erosion Control plan set. Mr. Talkington confirmed it is.

In response to Ms. Rogers, for Lots 18-21, Mr. Talkington stated the retaining walls would be rockeries. The lot grade is below the existing grade. He noted the top and bottom of the wall elevations. For example, Lot 19's wall is 4.5 feet. A cut wall is for when a retaining wall is retaining the existing grade when the pad grade is below the existing grade. For a pad above the existing grade, they would use a fill wall. These walls are constructed differently. Fill walls require extra stabilization. In every place where there is a cut wall, the face of the wall will be to the interior of the project. For the fill walls, the face is to the exterior of the project. Mr. Talkington addressed the staff Report (Page 13) concern about the height and visibility of walls along the Cedar River Pipeline. The wall at Tract A will be visible, though there will be landscaping planted between the walls and the perimeter. For Lots 79 and 81 (Exhibit K6a, Lots 80 and 82), there is a cut rockery wall. This wall will not be visible from outside the project. For Lot 40, there is a retaining wall. It is 4-6 feet to prop up the access drive. This will be visible. There's another wall at 7.5 feet. Lots 45 and 46 have a fill wall at 16 feet tall. In response to the staff Report, Mr. Talkington reviewed the heights of the walls. They prepared an alternative design to reduce the heights of the walls. The wall will now be 6 feet tall (Exhibit K6b, the revised grading plan for Lots 44-47). The portion of Lot 46 that borders the Cedar River Pipeline has a 2 foot wall. The wall at Lot 47 is 1.7 feet to 6 feet tall. Henley will be willing to agree to a Plat Condition that will call for the walls to be the revised height.

Ms. Timmons asked about the relevancy of this line of questioning to the SEPA Appeal, specifically Conditions #3 and #6. Ms. Rogers stated she understood the staff's buffer requirements to screen the adjacent neighbors from the development, including the impact of retaining walls. Ms. Timmons agreed to relevance.

Ms. Rogers asked Mr. Talkington to speak to the walls along Road A near Tract K. Mr. Talkington referred to this wall as a fill wall. There is an open space tract, Wetlands B and C, which will provide a screen for the wall. Focusing on this part of the plat, Mr. Talkington stated there was no significant adverse environmental impact with respect to the aesthetics.

Ms. Rogers addressed staff Report (page 21) regarding retaining walls. She stated the staff felt those retaining walls would interfere with tree retention. She asked, in general, does designing a site to include retaining walls help or hinder tree preservation. Mr. Talkington responded it can help by reducing grading requirements along the perimeter of the site and protect trees. When he designs a plat, the cost of construction is considered. Retaining wall construction is more expensive than grading. They were directed to save trees, which meant construction of retaining walls. Ms. Rogers asked who Mr. Talkington turned to when he needed to determine the effects of his design for retaining walls on tree preservation. Mr. Talkington said that's a question for the arborist.

Ms. Timmons asked Mr. Talkington to describe his thought process on providing the buffers he provided and their merit. Mr. Talkington stated it started with the road network. They had two locations to tie into for an internal road. In creating the road corridors, they tried to lay out lots that would be evenly distributed on both sides of the road. They looked to use the property most efficiently for the lot layout with respect to the grading. They tried to reduce the overall grading.

Ms. Timmons asked if Mr. Talkington saw merit in providing a perimeter buffer. Mr. Talkington stated he didn't show as many buffers initially. They initially looked to retain trees in larger pockets in other areas. As the project evolved to its current configuration, they considered saving trees as part of the buffer.

Ms. Timmons asked as a practical matter, how would a 15 foot buffer affect plat design? Mr. Talkington stated that he had considered it. There are many alternative scenarios. They looked at how the buffer would impact their original design. There was a significant change in lot yield. Ms. Timmons asked if Mr. Talkington considered aesthetics in his design. He stated he did because he wanted the project outcome to be pleasing.

Mr. Steve Lee, Renton Development Engineering Manager, stated typically the City doesn't see as much of a concise grading plan proposed for preliminary plat. He is glad Mr. Talkington prepared one. He asked Mr. Talkington to describe the setback from the walls. Mr. Talkington stated that is a question for the geotechnical engineer, however there is no need for a setback from the geo-grid.

Mr. Lee asked if construction of the geo-grid caused excavation in to natural areas. Mr. Talkington stated it did. Also, cut walls will require a wall drain behind them. Mr. Lee asked if the walls would need to be setback into the lots in order to reduce the impact on the natural areas. Mr. Talkington said they design the walls to be entirely on the subject lot and not within the open space.

Mr. Lee asked if a tree is located near a drainage wall, would the tree be impacted. Mr. Talkington stated he didn't know.

Mr. Galen Wright, of Washington Forestry Consultants, is an arborist. Mr. Wright described his education and qualifications. He has owned his company for 21 years. Their focus is on urban forestry consulting. He personally has 35 years of experience. He's worked on 1,400 similar projects

of many scales since 1994. He stated in general, his tree protection plans are accurate. The trees he has designated for protection are saved. Though, occasionally, they will find an edge tree that doesn't look as good after the project and before. In that case, they mitigate the tree. The tree protection plan exhibits are Exhibit A4 (June) and Exhibit A12 (August). The August plan is tied to the most recent layout.

Ms. Rogers noted the report concludes this is a "well treed site". By that, Mr. Wright stated means he was able to save two or three clusters to break up the clear cut look. If they supplement with lot trees and street trees, in 10 years the property will be well treed. There is a nice low brush community on the site that improves the buffer capacity of the vegetation. The wetlands on site are also well treed.

Ms. Rogers stated the 30% tree retention requirement translates to preserving 188 on-site trees. The August tree retention plan proposes to save 181 trees and relocate others. Mr. Wright stated his understanding of the Renton code with respect to construction damage means the tree can be replaced at a ratio of 2:1. He stated he is familiar with SEPA staff Condition #3. He said his understating of the requirement was not to mandate a hard 30% requirement without field judgment. The code allows them to save trees but mitigate those that can't be saved.

Ms. Rogers asked Mr. Wright how many trees would be saved. Mr. Wright replied well in excess of 188 trees would be saved. They have re-analyzed the edges and found there were more trees than they had earlier expected before a more formal survey was undertaken.

Mr. Wright discussed the relationship between retaining walls and trees. He stated he had the grading plan in hand when he did his follow up evaluation. They had been very hard on the edge trees initially. Later, he was able to perform a tree by tree analysis with the grading plan in hand. Trees respond very differently to walls based on where the majority of their roots are growing. He did a tree by tree analysis to determine how much, if any, intrusion could be done to a tree's root protection zone. This is usually a later stage analysis. He's very confident in his current estimation of the number of tree that will be viably preserved. He knows exactly which trees will be impacted, and how for each edge tree.

Mr. Wright said the next step is to have a pre-construction meeting. They always ask to be included in that conference. At that time the clearing limits are staked. He walks those boundaries. If there is anything different from current knowledge, then they will make field adjustments. They mapped tons to trees. Sometimes, they'll find the survey and field location don't quite match. They adjust clearing limits during the field observation. They'll remove hazardous trees if they find them. After that, they put up tree protection fences. If anything changes during construction, then Mr. Wright asks to be included in the decision of how to treat the trees.

Ms. Rogers asked if this process is described in the tree protection plan. Mr. Wright said it is. He stated he has no doubt this project will retain more than 30% of trees even accounting for field adjustments for hazardous trees or others that can't or shouldn't be saved.

Ms. Rogers asked Mr. Wright about the perimeter buffer. She said the City is concerned about a 50% sight obscuring buffer. She asked about the 10 foot buffer specifically. Mr. Wright stated he understood the buffer and the tree retention within the buffer. He stated he also is familiar with Henley's plan to provide 6 foot fences along the backyards. With the 10 foot buffer and fences, the 50% screening requirement will be met. New trees can also be planted in any gaps. In his opinion, a 15 foot buffer would add a few more trees, but not a huge amount. Ms. Rogers asked if Mr. Wright thought there was a significant adverse environmental impact from the project. The City Attorney objected. The Examiner stated the question limited to aesthetic impacts is allowed. Mr. Wright stated the 6 foot fence is sight obscuring. There are trees everywhere but the stormwater facility and a few in the pipelines. There are several layers of buffering. There will be places where you can see new houses better than others, but there will be a fence and trees. Within a few years trees will fill the gaps.

Ms. Rocale Timmons asked Mr. Wright if he knew how many trees exist on the site. He stated there were 1,305 trees on-site. This is a contiguous canopy cover. The canopy is viewed by surrounding property owners. They are proposing to keep 181 trees plus the trees in the critical areas and buffers. There are 626 significant trees in the buildable areas. There are many other poor quality trees. They will remove over 400 significant trees. Ms. Timmons asked how the removal of so many trees would impact the surrounding property owners. Mr. Wright said it's aesthetic. There is no other impact.

Ms. Timmons asked about the revised tree retention plan. She asked if the new plan is approvable as is. Mr. Wright stated it was and they will exceed the minimum 30% requirement. He stated it is a valuable contribution to the environment.

In response to Ms. Timmons, he stated an adequate width for a natural vegetated buffer depends on the type of trees, the age of the trees and the how they are growing. There are places on site where the screen is dense and others that are thinner. They didn't map alders and cottonwoods. They didn't include those in the survey. Ms. Timmons asked what buffer width is necessary to provide screening in a natural vegetated state. Mr. Wright stated it depends on site conditions. Mr. Wright stated if they plant in a 10 foot buffer with a double staggered row of conifers, it will create a very dense screen in 10 years. A 15 foot buffer is not adequate to add a third row that would require about 30 feet of buffer.

City Testimony

Rocale Timmons addressed the applicant's testimony with respect to Conditions #3 and #6. The City's mitigation measure is not intended to preclude replacement of trees damaged during

construction. The applicant is citing the wrong code. Condition #3 is solely designed to require a tree retention plan. The applicant has provided a plan that does not meet the requirement. It is not detailed enough to be used during construction. Staff analysis (Exhibit N) goes through the significant adverse impact of removing such a large tree canopy. The staff feels the MDNS condition defines a significant impact and provides appropriate mitigation.

With respect to Condition #6, Ms. Timmons stated staff has demonstrated a significant impact to surrounding property owners with respect to aesthetics. Staff feels the mitigation measure adequately addresses these impacts.

Mr. Terry Flatley, City of Renton Urban Forestry and Natural Resources Manager, described his education and qualifications. He has reviewed at least 50 tree retention plans for the City. Mr. Flatley stated he had not visited the site personally. It is a fully timbered site with 100% canopy cover. He described the site as a large woodland area in the middle of the City in the middle of a subdivision. This is a rare site. He believes it is necessary to protect the tree canopy. The City tries to retain as much canopy as possible. He believes the appropriate amount of trees to protect is a minimum 30%.

In response to Ms. Timmons, Mr. Flatley stated a 10 foot buffer is adequate to support a natural vegetated perimeter, depending on the type of vegetation. This strip will retain smaller vegetation, but not large mature trees. He provided a recommendation for a perimeter buffer of 35 to 100 feet. To his knowledge, the City requested a 15 foot buffer. In terms of accommodating trees, there are some extra trees being protected. Five feet is a very minor increment. It would allow for more planting. Mr. Flatley stated he felt a buffer is needed along the southern perimeter because buffers are to moderate climate and obscure sites from view. It's an aesthetic issue for trail users and adjacent neighbors. The buffer would provide privacy.

Mr. Flatley stated without an adequate screen there would be significant adverse aesthetic impacts to trail users and neighbors. A 15 foot buffer would reduce the impacts.

In response to the Examiner, Mr. Flatley stated the difference between a 10 foot and a 15 foot buffer is not significant in terms of mitigating impacts.

Ms. Rogers asked if Mr. Flatley had reviewed the revised tree protection plan for the project. He stated he had reviewed Exhibit 11 today but his review is based on the 2013 version. Ms. Rogers asked if it was possible Mr. Wright's tree retention plan would assure protection of 30% of the trees on the site. Mr. Flatley stated with oversight it is possible. Ms. Rogers asked if he provided that oversight. He said he didn't.

Ms. Rogers asked if the City's MDNS Condition #3 was essentially a restatement of City code. Mr. Flatley agreed that is was. Ms. Rogers asked if Mr. Flatley had provided SEPA mitigation measures to staff and asked the staff to implement them. He stated he hadn't. Ms. Rogers asked if the

condition would be adequate to require a tree protection plan and have it approved by the City. He stated it could.

With respect to MDNS Condition #6, the buffer requirement was for sight obscuring and was 15 feet wide. The staff analysis (Exhibit N) increased that buffer from 15 feet to 15-50 feet. Ms. Rogers asked if Mr. Flatley had read Exhibit N. He stated he hadn't. Ms. Rogers asked if he was familiar with the City's Comprehensive Plan. He stated he was generally familiar with it. He stated he was not familiar with specific policies.

Ms. Rogers asked Mr. Flatley to review a large area photo with respect to his earlier testimony (Exhibit K6c). Mr. Flatley stated he recognized the area and that there are a number of green, treed areas around the subject. He agreed there is a large protected corridor along the Cedar River and at Tiffany Park. He further agreed that with or without Tiffany Park, there will remain treed areas near the project.

Mr. Flatley stated the City's landscaping code with respect to screening allows planting and fencing. He agreed the project plan includes fences and vegetation. Mr. Flatley stated he didn't have any knowledge of buffers on adjoining properties but didn't see any in the aerial photo.

Ms. Timmons stated that staff is standing by their analysis. For mitigation measure #3 it sounds as if the appellant intends to meet the 30% requirement. That's all the City is requesting. The applicant is failing to consider the City's intend is to protect the existing tree canopy. The mitigation measure is intended to preclude replacement tree. The code is inadequate to do that without the mitigation measure. However, a tree retention plan is amenable to the City.

For mitigation measure #6, the staff feels they have proven impact and provided adequate mitigation. Staff feels the public are the appropriate people to provide information on impacts.

Applicant Testimony

In response to the Examiner, **Mr. Talkington** stated in the northern portion of the plat, the 15 foot buffer would be preserved but clearing and a wall would be located in the lots themselves (Lots 11-14). No additional clearing will go into the buffer area. For Lots 15-18, there will be no wall. All other improvements would be within the lot area. There will be no additional clearing.

Ms. Rogers asked the Examiner to read the SEPA Appeal argument letter dated November 18, 2014. As stated in that letter, the City staff and the applicant are in agreement to Revised Conditions #1 and #3. However, they would argue to keep the existing language in the condition, but add a comma and add a statement that an updated tree protection plan and land clearing plan to be submitted and approved prior to construction. Condition #6 deals with a perimeter buffer. No perimeter buffer is required in this zone and none exist surrounding the subject. The requirement would be unique in this area and they would be buffering their single family uses from surrounding single family uses.

There is no significant impact in terms of aesthetics. They have voluntarily provided 10-200 feet (50 foot average) buffers and two pipelines of 60 to 100 feet (Mercer Island Trail and Cedar River Trail corridors, respectively). Only six lots touch a property boundary. Some have fill walls, the highest currently proposed is 6 feet high. There is a 100 foot Cedar River Trail buffer adjacent to these properties and between adjacent properties. The City's SEPA analysis cited Comprehensive Plan Objective CDG and Policies 50 and 55 as justification for the perimeter buffer. Those policies do not apply here. The City omitted the citation of the objective, which does not apply here. These uses are not different. The proposed use and adjacent use are the same. The tree canopy is being protected. There is no need for a perimeter buffer of 15 feet, let along 50 feet. Addition of a buffer after the fact will invalidate the proposal and violate state law.

Public Testimony

Ms. Claudia Donnelly lived in the Renton Potential Annexation Area in Renton Highlands. Ms. Donnelly stated she had submitted questions. In February 2014, in an article in the Renton Reporter, Ms. Timmons stated all 1,300 trees would be coming down. How will the protected trees be protected? This developer will clear cut all of the trees and put in replacement trees. At Ms. Donnelly's subdivision, Windstone, and at Piper's Bluff, this same developer clear cut all of the trees. Who will make sure the trees won't be clear cut?

Ms. Donnelly stated she was concerned about the proposed stormwater detention pond failing and impacting the development. At Windstone, the detention pond failed three times spilling water and mud into a wetland and Honey Creek. At Piper's Bluff, the detention pond failed and dumped yellow water into May Creek. Renton officials do not work on the weekend; they will not protect the wetlands. Ms. Donnelly stated Renton allowed Safeway to build on wetlands three summers ago. They started getting water coming up through the floor and had to rope off the area.

The hours of construction ordinance must be followed. How will it be?

Renton has an ordinance keeping dirt off of the road and protecting streams during construction. The laws are not being enforced. Renton doesn't allow working on Sundays. This developer had contractors working on Sundays in at least Windstone and Piper's Bluff. No staff person will be there to monitor them.

The City does not require the contractor to get the necessary NPDES permit from DOE prior to start of work. Additionally, the City doesn't require erosion control fences near wetlands, private property or streams before clearing starts. They don't make the contractors have the necessary permits for clearing before building permits. In the late 1990s a builder cleared without permits and there was no consequence.

Ms. Donnelly expressed concern about the Renton appeal process. On November 26, there was a notice in the paper talking about the appeal timeframe for this development, yet the document itself

had not been released. She had to request it from the director. If there is no notice before the appeal starts, how can the City be trusted? On June 14, 2012 the Renton Reporter asked if Renton's tree preservation policy was just for show.

Ms. Donnelly presented pictures of Piper's Bluff. Forty-seven trees were supposed to be retained or mitigated. Some of the trees were saved. Many were cleared. The trees being planted are decorative and replacing Douglas Firs and other large trees. Some trees must be saved. She also showed examples of construction dirt on the road in front of her house. The dirt is washing into Green Creek and May Creek. No one at Renton cares about the street or the environment.

Ms. Barbara Smith stated considering the greenbelt surrounding the pipelines is not realistic. Those are dirt paths without trees. Ms. Smith stated she should not have to plant trees on her yard, plus the trees are 80-100 feet high. Replanting trees won't compensate. They are losing their quality of life. The wildlife that's there will be removed. The school district shouldn't have sold it. They didn't provide proper notice of sale. They were denied access to do further studies but the developer was allowed on it. She encourages the City to put strict enforceable timelines. She found 97 reviews on this developer online. Only 5 were positive. They are local and speaking to poor construction, leak issues, mold in new homes and poor customer service. People wait years to have construction defects repaired.

SEPA Appeal #2 – Project Opponent TPWAG

Appellant Testimony

Mr. Daniel McMonagle is the attorney for the project opponents, the Tiffany Park Woods Advocacy Group. The opponents have lived in this neighborhood for 34 years and have historically used the woods.

Mr. David Beedon is a member of the TPWAG and has lived in the neighborhood since it was built 34 years ago. He lives at 1725 Pierce Avenue SE in Renton. Mr. Beedon lives directly adjacent to the project. He can walk to the former school property in five minutes. The TPWAG is composed of five persons who hold officer positions in a non-profit corporation formed in March 2014. The purpose of the group is to mitigate as much as possible any environmental or other impacts coming out of this development.

He has experience in the woods. He has been walking in these woods since 1982. He exercises there and watches wildlife. The character of the woods has been mostly unchanged for all that time. Some changes there were related to dirt embankments on paths to facilitate mountain biking. There are teepee and treehouses built here. The woods have never been fenced, except along the Cedar River Pipeline. The fence has been there at least 34 years. It has been unmaintained. The fence is along the City of Seattle Watershed property line. It is not a school district fence. The woods property has never been signed no trespassing.

There is an extensive trail system in the woods that were there when he moved in. There are nine separate access points along the two pipeline rights of way and other at the end of 18th Street. These are trailheads. The trails are a large loop with several connector trails. The outer loop is about a 15 minute walk.

Mr. Beedon has personally been pruning and trimming trails to keep them open. He believes the school district performed maintenance there four times in the last three decades including cutting down dangerous trees and removing trash or yard waste. He is aware of no other activity from the school district on the property. The school district performed maintenance there in 2000, 2010, and twice in 2011. Each of these incidents was related to a request for action to the school district by a member of the public. Mr. Beedon spoke to the school district in 2000 about illegal activity on the property. That prompted the 2000 maintenance and the placement of signage discouraging dumping. In 2010, Mr. Beedon called the school district to ask why some trees had been removed. The school district stated there were dangerous trees. In 2011 he spoke with the school district about illegal trash and a fire pit on the property. The school district responded by cleaning up the trash and removing the fire pit.

Mr. Beedon quoted an email sent to him by Mr. Mike Rouch of the school district. The email stated, "I got the sense this is an important asset to your neighborhood and I wanted our folks to do what we could to restore the beauty there."

Mr. Beedon stated the school district had essentially left the property alone.

Mr. Beedon stated the trails have been used for recreational walking, running, dog walking, bicycling, socializing, wildlife viewing, and inventorying plants. Kids build forts and tree houses. This area is used extensively for recreation, on a daily basis there are at least a dozen people in there. Over the years, thousands of people have used it. Use of the area has increased due to the informal maintenance of the paths.

Aesthetically, the woods are beautiful. It's a wild area with a variety of vegetation and wetlands. The topography is interesting. There are seasonal creeks. It reminds him of the foothills of the Cascades, though with less dramatic topography. Mr. Beedon described wildlife he has seen on the property including bobcat, pileated woodpecker, red headed sapsuckers, ducks, crows, other types of birds, deer, and owls. Mr. Beedon stated there are a rich variety of plants on the property. There are also at least two geocaches on the property.

Mr. Beedon showed pictures of stormwater accumulated on the two pipelines on the property. The pipelines drain onto the school district property. Recently, the City of Renton cleaned out drain pipes to improve the drainage and reduce flooding.

In response to Mr. McMonagle, Mr. Beedon stated he had hired Mr. Neugebauer in September 2014 to perform studies on the property and review the applicant's studies. The TPWAG had asked the

school district to allow them to do a third party wetland evaluation. The school district denied the request stating it did not further the interest of the school district or the developer.

The Examiner asked Mr. McMonagle to tie the historic use of the property to a SEPA impact, noting the public did not have a right to use this property in the first place. How is there an adverse impact under SEPA? There could be a prescriptive use, but the Examiner does not have the authority to adjudicate prescriptive use or adverse possession. The Examiner noted Halverson v. Bellevue, and the limits on restrictions of Hearing Examiner authority, specifically Legune v. Clallam County, and others. The Examiner's authority is limited to those described specifically in the City code. The Examiner asked Mr. McMonagle to provide a brief on the issue of the authority and relevance of the public prescriptive right to the property by November 28th with applicant and City response by December 5th.

Mr. Steven Neugebauer of SNR Company is a licensed hydrogeologist and engineering geologist. He presented a PowerPoint presentation highlighting the relevant issues from his report (Exhibit M49). Mr. Neugebauer described his qualifications. He stated the biggest issue with this project is groundwater and the engineering geology of the site. The big thing is the SEPA document is inadequate. His scope for this project is to assess the applicant's studies and to review the environmental impacts of the project. SEPA should produce information regarding impacts. The SEPA checklist is not designed to gather all the impacts. There should be more intensive studies done here because of the intensity of the development and of the surrounding development. There are only preliminary studies, which are inadequate.

Mr. Neugebauer stated the history of the site needs to be reviewed as far back as possible. His presentation will focus on the SEPA issues. Only four studies have been incorporated in the SEPA checklist, there are now 22 studies. Mr. Neugebauer described the wildlife corridor link along the greenbelt from the subject to the Cedar River. This is the only significant open area in the local region. The moor is surrounded by development except for this narrow wildlife corridor on the northeast corner. He showed maps dating back to 1865 to show historical water flows. In 1898 the Black River still flowed, the Green River Valley was the White River Valley and the Duwamish Waterway was still a river. There are wetlands shown on the map in this area as back as 1898. The entire regional drainage system has changed since then. The title report shows in 1936 this subject property had been cleared and was owned by the railroad and in 1945 by a Department of Defense corporation. This is an important issue to SEPA because there might have been wartime activity here with potential contaminants. Mr. Neugebauer states there should have been a Phase 1 ESA. Mr. Neugebauer showed the development pattern in 1990. It has been forested since the 1940s. The oldest trees are about 65 years old.

Mr. Neugebauer showed the geomorphology of the area. The property had been in a melt water channel from the last ice age that became the Cedar River. Drainage goes both to the southwest and northeast. The area has many depositional environments for soils. There are structural anomalies in

the area. There are no geological reports performed by the applicant and they couldn't perform their own. He stated there should have been more soils tests, percolation tests, more test pits and borings. There is neither engineering geology nor hydrogeological studies.

He showed a geologic map of the area and pointed to geologic issues from the confluence of two seismic faults. This might influence landslide activities. The USGS maps show that the closest fault zone is 3.9 miles, though there may be others nearby that haven't yet been mapped. Geologists look for bend trees and uneven surfaces. There are many bent trees here. That indicates ground movement. The ground is moving slowly and the trees are bending with it. There might be shallow or slightly deeper ground movement. He walked the site, but didn't perform studies because the school district wouldn't allow it.

The SEPA documents say there are no structures on the site, but there are treehouses and forts. The site is vacant but not unused. The Opponents state there is no SEPA document, only a report from the City's Environmental Review Committee.

Mr. Steven Neugebauer discussed the title report's historical accounts of ownership of the project site (Page 12). There is an easement for a natural gas pipeline. There are several other easements for various purposes. Ms. Rogers asked about the relevance of this testimony. Mr. McMonagle asked Mr. Neugebauer to describe the relevance of this testimony in terms of SEPA. Mr. Neugebauer stated the SEPA checklist asks about potential hazardous wastes on the property. No studies were conducted. The title report shows potential hazardous uses in the past. A phase 1 environmental site assessment should have been conducted. Mr. Neugebauer stated the applicant hadn't shown how they were dealing with the City's drainage easement, which is part of the City's drainage system. Ms. Rogers noted that the drainage easement was released.

Mr. Neugebauer stated his concern from a geologic perspective is that there were no geologic or hydrogeologist studies performed for this site. There isn't enough information. This site could have fault zones. Also, there is potential evidence of ground creep or slumps. His specific concern is that these mobile soils must be dealt with, which would require further study. He also stated the SEPA Checklist is wrong because the studies came later. He stated the Checklist was wrong because it ignored recreational activities and recreational structures on the property.

Mr. Neugebauer stated 14 days is insufficient to review the many studies that were performed as part of this application. He stated he had reviewed all of the documents and believes an Environmental Impact Statement should have been required. The SEPA Checklist was the only document presented. The SEPA document should show what the conditions are in a summary format.

Another issue is the hydrology and geology of the site. The wetland determination by Gary Shultz and the Technical Information Report from Barghausen and the Otak report show groundwater saturation levels that make this site undevelopable. The groundwater will be too high in the rainy season. Mr. Neugebauer referred to the Shultz report. He stated the depth to the water table is zero

inches below ground level. Groundwater is a flat line, it is not contoured. This site needs additional study to determine how it can be developed. An EIS should be required. Mr. Neugebauer read definitions for various types of groundwater and hydric soils from the USGS. The applicant's report shows so much water there that development without pumps may not be feasible. Groundwater is also protected from pollutants. It's illegal to discharge pollutants into groundwater. Water from the homes cannot be discharged into the wetlands.

Mr. Neugebauer stated the AES geotechnical report is not adequate to satisfy SEPA requirements. It stated that in the report. There have not been the extensive studies that should have been prepared. There were inadequate numbers of test pits. Though they acknowledge groundwater will be near the surface in winter (8" from surface), but don't describe how they plan to deal with it. The report was paid for by the school district and was inadequate in scope. The report shows the site has geotechnical critical areas, specifically erosion, site stability and other indicators of shallow ground creep or slumping.

The site will need deep infiltration strategies to get the stormwater down below the high water table and into a more permeable layer. There is no capacity for stormwater infiltration on this site. This may be why the developer has chosen a stormwater vault because a pond won't infiltrate. Anything excavated below the surface will have groundwater issues. Drainage ditches will be full of water. If you put a vault where groundwater is at the surface, the vault will have to be tied down to bedrock or it will float out of the ground. There need to be much more detailed studies.

The geotechnical report says the slope angles are for areas where groundwater seepage is not present at the face of the slope. There will need to be some sort of temporary de-watering. Mr. Neugebauer stated the water will come back and flood basements and keep stormwater from flowing. Based on our review, the deposits are not the type the report suggests. This soil is impermeable. The AES report assumes the soil is permeable. The soils promote shallow ground creep and slumping.

Mr. Neugebauer reviewed the Environmental Review Committee report. He believes it is inadequate and an EIS should have been prepared. This project was done in too many disjointed steps. On page 8 of AES, the report says the wetlands may be groundwater influenced. However, there is no further study to determine what to do. Having groundwater within 8" of the surface is a major issue. There is a 12" culvert discharging stormwater into the wetland. That's illegal under the Clean Water Act. They cannot discharge to a point source. There need to be better studies.

The Environmental Review Committee report states the project will result in minimal loss of vegetation to the site. That's impossible given the current proposal. According to the Washington State Department of Fish and Wildlife, there is priority habitat here.

The removal of existing vegetation will remove a great deal of the evapotranspiration on this site. The trees may remove as much as 75% of the water from the site. The ERC is more worried about views than the more critical water issues.

Mr. Neugebauer stated the ERC is basing its opinions on studies that are too preliminary. The issue of liquefaction isn't addressed at all. There is no study as to how the displaced groundwater will affect neighbors.

Mr. Neugebauer's final point is that there is no cohesive and conclusive SEPA document. You can't make a final environmental determination on a document that doesn't exist.

Ms. Timmons asked Mr. Neugebauer if he'd read the drainage report in the application packet. Mr. Neugebauer stated he had. Ms. Timmons asked Mr. Neugebauer to relate his testimony to the drainage report. Mr. Neugebauer stated the applicant put the cart before the horse because there are no studies for groundwater hydrology. There isn't enough information to form a drainage report.

In response to the Examiner, Mr. Neugebauer stated he would have done test pits and boring, piezometer studies and look for the groundwater. If the wetlands are there, the groundwater is there. We need additional studies to determine where the water really is. If it's at the surface, the drainage report is incorrect. The Examiner asked if they know the groundwater is, why does there need to be additional study. Mr. Neugebauer stated the drainage plan isn't taking into account the groundwater. A building pad cannot be placed where the groundwater at the surface. Utilities cannot be placed within the groundwater, particularly sewer which would be continuously draining groundwater.

Ms. Rogers asked if he was familiar with the 1995 Local Project Review Act (RCW 36.70B). Mr. Neugebauer stated he wasn't. Ms. Rogers asked if Mr. Neugebauer was aware of the SEPA provisions that provide that city regulations can be sufficient to mitigate environmental impacts. Mr. Neugebauer stated he had looked at it and at the requirements for an EIS.

Ms. Rogers asked if he had worked with real estate developers who are speculatively buying property. He stated he did and that developers did feasibility studies. He stated phase 1 environmental site assessments (ESA) were common. He had not seen the applicant's Phase 1 ESA and couldn't speak to whether one existed. It is a typical procedure.

Ms. Rogers asked if Mr. Neugebauer was familiar with the City's preliminary plat procedures. He responded he was slightly familiar with them. Mr. Neugebauer stated a project of this size would typically have an EIS. He had never seen a development of this size with this much contention without an EIS. Ms. Rogers stated the applicant had prepared a SEPA Checklist June 2014. Mr. Neugebauer was not aware of the newer checklist.

In response to Ms. Rogers, Mr. Neugebauer stated the test pits from Mr. Shultz's report were taken throughout the project site, though most are in the wetland areas. He stated there are high levels of water throughout the site because water tables are flat. He stated he was not aware of a 303D listing for any water on the site, though all wetlands are expected to be so listed to allow discharge.

Mr. Neugebauer stated stormwater is being directed to a vault but it will not treat the stormwater for heavy metals. Ms. Rogers referred to the 2012 AES report. The top of page 2 states the site is suitable for buried utilities, paving and structures. Mr. Neugebauer stated they also said additional studies would be conducted. Ms. Rogers asked if he understood that detailed construction and engineering review and much more intensive studies will be conducted before final plat. Mr. Neugebauer reiterated he felt the cart was being placed before the horse in that the SEPA review is now for a reason. It allows for adequate public comment. Later phases do not.

Ms. Rogers referred to the aerial photo (Exhibit K6c) and asked Mr. Neugebauer if the project site isn't completely surrounded by similar residential developments. He stated there is forested land around here and existing development is less dense. He did agree there are existing houses and roads surrounding the project. He doesn't know if there are existing geological or hydrological issues affecting the existing homes, however he speculates that may be why the areas to the northeast and east are not developed.

Applicant Response

Mr. Kevin Jones, Transportation Engineer, Transpo Group, prepared the traffic report for this project. He also reviewed the public comments and will respond to them. He's responding specifically to letters from Mr. Roenicke and Ms. Garlough. Mr. Roenicke was concerned that the traffic counts were conducted in June 2013, a time period when the adjacent elementary school is out for summer. Mr. Jones responded by noting that they acknowledged school was out of session. As such, they added to their counts school traffic based on the enrollment of school at the time, which is within eight students of the current student count. They looked at average trip rates for elementary schools and inflated the counts by 210 AM Peak and 70 PM Peak hour trips. Ms. Garlough claimed to have taken counts themselves and compared them to the Transpo report. Ms. Garlough stated the traffic volume was 30% higher than Transpo's measurements. Mr. Jones agreed that traffic volumes fluctuate day to day; however, the traffic volume in the neighborhood is low. The volumes are low enough that you could double traffic and still have Level of Service (LOS) A or B at all of the surrounding intersections. The intersection operation will stay high and not fall below an acceptable LOS that would require mitigation.

Mr. Jones responded to another comment about the impact of new residential traffic on school pedestrian traffic by stating that the overlap in traffic conditions would be in the morning. The residence peak happens after school is out. The projected increase in volumes on Lake Youngs Way is 10-45 +/- trips in the AM Peak hour. This increase, on average, is one vehicle or less per minute during that time period. Traffic volumes fluctuate and there may be an extra car or two in that time period. The school traffic tends to be concentrated in 30 minute intervals. Most of the project traffic won't mix with school traffic volumes.

Mr. Jones spoke to potential safety issues for school pedestrian traffic. He stated there won't be much impact because the volumes are low. Also, they are providing a pedestrian crosswalk at 18th and Lake Youngs Way. Given the speed limits, the pedestrian crossing and relatively small increase in volumes, there do not anticipate a safety hazard.

There is concern about visibility on 16th Street and there was a suggestion this is an accident prone area. They review the accident logs from the City for this location. Specifically, they reviewed collision records for SE 16th Street between Beacon Way SE and Lake Youngs Way SE. For a four year period, there were no collisions reported in this area. There is a grade difference between Beacon and Ferndale. They looked at the collision records and measured daily traffic volumes over a seven day period. 16th Street serves about 3,300 vehicles per day. 4.8 million vehicles traveled along that section in four years without a single reported collision. There was one in February of this year, though that was related to icy conditions. Mr. Jones stated the data does not support the assertion this location is a collision prone location. They will also add additional signage on the north side of 16th Street indicating there is an intersection approaching. The geometrics of the road make it difficult to see the intersection. There is a sign now recommending speed limits of 15 mph in this area. There are sidewalks along the route to the school (Exhibit A9, Figure 1).

Mr. Jones responded to a comment from Ponderosa Estates. Residents in this subdivision are concerned about long waits nearby intersections, specifically the intersection labelled Intersection 13 in the Transpo report. They evaluated the intersection from a delay standpoint in the AM and PM Peak. The intersection was not originally reviewed, but was added at the City's request. The review of this intersection was this year while school was in session. Based on the data and the stop control of this intersection, they found this intersection has 15 seconds of average delay or less. The delay will not significantly increase with this development looking out to 2018. It's currently 13 seconds in both the AM and PM Peak. The LOS is B now and will stay that way. This is an acceptable delay under the City's standards. No change in traffic control is necessary.

Another issue with respect to school traffic is whether there will need to be extra traffic control personnel from the school. Mr. Jones stated he didn't know, but that the use of traffic crossing guards is a typical occurrence in this area. He doesn't anticipate the school district will need to hire traffic control personnel they don't already have.

Mr. McMonagle asked Mr. Jones about the changes from the original to the revised traffic study. Mr. Jones stated that in both cases, there were the two proposed entrances there are right now. Mr. McMonagle asked Mr. Jones to explain the route persons in the subdivision would use to get out to a minor arterial. Mr. Jones stated that 60% of the Tiffany Park traffic was assumed to go to the west and the remainder would go south. Of the westbound traffic, they assumed the majority of it would go to SE 16th Street via some route. They would then access Edmonds Avenue. They revised the study because there was a lot of public comment about the absence of that intersection in the study. For the southbound traffic, they assumed the traffic would mostly go to SE 18th Street to Lake

Youngs Way. Some would go to SE 16th Street; others would go to Royal Hills. Other traffic would go to Beacon, Ferndale or other routes to SE 16th Street and Edmonds Avenue. He stated SE 16th Street had more grade than SE 18th Street; otherwise the roadway geometry was comparable.

Mr. McMonagle asked Mr. Jones about the development's proposed roads. Mr. Jones stated the development will have roads designed to the current standards.

Ms. Racheal Villa, of Soundview Consultants, described her experience and qualifications. Her company conducted the fish and wildlife habitat assessment for the property (Exhibit K, page 40). Together, all the scientists who worked on this report have about 80 years of experience. She is a qualified senior author for biological assessments under WSDOT, which is fairly unique.

Ms. Villa stated she had visited the project site. She was hired to perform supplementary wetlands review for fish and wildlife habitat. They reviewed the wetlands assessment. They reviewed lists of species from the USFW and the WA DFW for priority habitats and species offsite associated with the Cedar River corridor. There was nothing specifically mapped on site, so they looked to see what was on-site. In their normal critical areas assessment, they would usually incorporate wetlands and habitat scientists. They found nothing specifically listed for priority protection. They reviewed a wider area for noise and stormwater impacts (Exhibit A, Attachment 16). Ms. Villa noted the habitat here is fairly disturbed on a large scale basis. There is a lot of human intrusion. It's not directly connected to the Cedar River corridor. There are trees, but the wildlife has to cross the 60 foot wide water easement, cross a residential road, cross residential yards, cross a 40% slope and then the Bonneville Power Administration's easement to the Cedar River corridor. It's discontinuous, isolated and highly disturbed. The prior testimony documents that by mentioning the extensive use practiced here.

Ms. Villa stated they looked at all potentially regulated species on site including all state and federal listed species and habitat. They found habitat potentially associated with pileated woodpeckers and Townsend's bat, both Washington State listed species. Ms. Villa stated there is a great deal of woodpecker activity. She didn't see nests, but she did see snags. Pileated woodpeckers utilize 1,480 acres, which would include the whole Cedar River corridor. It is possible the woodpeckers are foraging on site. Woodpeckers are a residential, non-migratory species. Ms. Villa stated Townsend's bats might use the site seasonally during the summer for foraging for insects. The DFW would require protecting wetlands, associated buffers and large trees. Ms. Villa stated the plat will not result in a loss of significant, protected habitat for these two listed species.

Ms. Villa stated the bobcat is not a listed species. It's a hunted species that doesn't have specific requirements for habitat protection.

Ms. Rogers asked Ms. Villa her opinion of the impact of the proposed project. Ms. Villa stated if the wetlands and buffers are protected and off-leash dogs and people on bikes were kept out, the

wetlands would be better protected than they are now. A typical buffer around a critical area is split rail, which does not keep wildlife out. They function to keep humans and their pets out.

Ms. Rogers asked Ms. Villa to summarize her November 18, 2014 memo. Ms. Villa summarized the letter by saying they reviewed for potentially regulated species and habitats in accordance with the City of Renton's codes. They concluded the proposal will not likely cause adverse impact on listed species or critical habitats with implementation of best management practices. Protection of wetlands, buffers and significant trees are proposed. She also mentioned the current condition with anthropogenic structures, unleashed pets and many other disturbances to wildlife currently occurring on the site. With respect to non-game species, they were surveyed in the review. She reiterated this is a highly disturbed, isolated patch.

Ms. Villa discussed the stormwater filtration system which will remove many pollutants. There is no direct downstream connection to Ginger Creek, which is a tributary to Cedar River. The plan as proposed will protect the downstream areas.

Mr. McMonagle stated he didn't understand the description of the critical areas fence. Ms. Villa described what a wooden, split rail fence looks like.

Mr. Gary Schulz is a wetlands ecologist. Mr. Schultz described his education and qualifications. He is a sole proprietor who does habitat assessments, mitigation planning, and wetland and stream studies. He is a water and sewer district commissioner. Ms. Rogers asked Mr. Schultz if he had visited the project site. He stated he had, many times. His work was focused on wetland delineation and stream identification. He used the ACOE, the DOE Wetlands Manual. He put transects on the property and walked the site in a pattern to determine the location of wetlands. He delineated the wetlands. His delineation was reviewed by Otak, the City's peer reviewer. Mr. Schultz concluded the wetlands are isolated and separated from downstream habitats and water. The southern pipeline dams the site and prevents the flow of surface water off site. They are pocket depressions that are influenced by perched groundwater on a seasonal basis. He visited the site during March and June to view where the water was by season.

Ms. Rogers asked if Mr. Schultz tracks weather patterns. He stated he used the SeaTac rainfall record. His review was conducted in March 2014, when the rainfall was 5-6 inches above normal for that time of year. According to the news, it was record breaking month, though he couldn't quote the record.

Ms. Rogers asked Mr. Schultz about shallow groundwater and the data plots described by Mr. Neugebauer. Mr. Schultz stated they were all near wetlands boundaries. Mr. Schultz reviewed these extra data points at the request of Otak. Mr. Schultz stated Mr. Neugebauer used the term 'aquake regime'. This term means hydric soils. A lot of these plots were outside the wetland boundaries and didn't have hydric soils. They aren't part of the wetland, though it was a wet time of year. Mr. Schultz stated the soils on site are Alderwood, which typically overlay an impervious till layer.

Perched, seasonal high water is common. Mr. Schultz stated the areas that will be wet in the winter will be protected. In June 2013, there was no water at all on site.

Mr. McMonagle asked Mr. Schultz whether he's a hydrogeologist. Mr. Schultz stated he wasn't. He is a wetland ecologist. Mr. McMonagle asked if Mr. Schultz can interpret hydrology. Mr. Schultz stated delineating wetlands requires an understanding of wetland hydrology, though he didn't provide either a hydrology report or a geologic report.

Mr. Ray Coglas, of Earth Solutions NW, described his education and qualifications. He is a licensed geotechnical engineer. He's been a registered geoengineer since 1998. He is the president of Earth Solutions NW. Mr. Coglas stated he had been present for the TPWAG testimony and had visited the project site. He submitted a letter as part of the exhibit package (Exhibit K, page 33). Ms. Rogers asked Mr. Coglas to discuss his letter and his response to Mr. Neugebauer.

Ms. Rogers asked to discuss the soil and groundwater characteristics on the site, specifically as they related to the ability to develop the project. Mr. Coglas stated his role was initially to review the AES report. His portion was review of prior reports, field surveys and review of public comments. With respect to the AES report and some of the testimony he'd heard, the AEA report is standard practice. The site is fairly to moderately sloping site, mainly glacial till though there may be some outwash. The level of investigation that was done as part of the AES report was similar to what his firm would have done. A lot of time geotechnical reports are driven by the proposed use. Kurt Merryman authored the AES report. He is reputable. The report was valid. They adequately characterized on site conditions.

The one thing that stood out to Mr. Coglas is that AES didn't throw up any red flags. There's nothing in the report that would suggest major problems. AES was working for the school district and would have been required to tell the district if they thought there would be issues for development. All sites are unique, however this is a typical glacial till site. The level of investigation was appropriate with test pits. If it had been him, he'd done the same type of review for the intended use. If this was proposed to be a 25 story office building with three levels of underground parking, then far more intensive study would have been needed. The analysis that was done was appropriate for the scale of the site and proposed type and intensity of use. In preparing his summary, he looked at all that. He agrees with the AES conclusions. A lot of what a geotechnical engineer does is determining the scope of analysis needed. They could have done a lot more, but the budget and type of project didn't require it. Most of the activity will be near surface and low intensity.

Ms. Rogers asked if there would be additional geotechnical analysis to support construction and engineering design at the permit stage. Mr. Coglas stated as far as the actual engineering of the project when it comes to assigning actual values for designer, his firm will prepare a geotechnical report that may or may not include more information. The final design isn't finished, so they don't know yet where they'll need more specific information.

With respect to shallow groundwater, Mr. Coglas stated there is groundwater in the northwest. He stated the various depths of groundwater testified to before (6", 8", or 2'), AES characterizes the water table at 8' in depth during the summer. It fluctuates seasonally. There's nothing in the AES report suggesting 2' in the summer. It reports 8' in depth. The thing he wants to point out is this site is a perched groundwater condition. Glacial till is dense and cemented and does not allow vertical penetration of surface water to depth. That's common. He is not surprised that during wetland studies they encountered shallow or ponding water in the depressional wetland areas. To suggest the whole site will be underwater is not consistent with a perched groundwater table. There are recessional sands at the surface that allow water to pass through. That water then gets trapped in the impervious layer. He deals with groundwater on all of his projects. It is not a condition that precludes development. There's nothing unique to the plot of Tiffany Park or its surrounds geologically speaking. The Kent Valley is a flat, deep alluvial deposit with a level groundwater table that fluctuates evenly across the valley floor. The Kent Valley is like a deep bathtub. That's not the case here. The till layer is shallow and undulating in Tiffany Park. The elevation change across Tiffany Park is 40'. For example, if the groundwater table were level here, a change in 40' in elevation across the site would cause most of it to be underwater. That's not the case. There are seep environments that are seasonally wet, but they are localized based on the topography and glacial till layer. Groundwater seepage is managed during construction; it doesn't preclude construction.

Mr. Rogers asked Mr. Coglas to discuss managing stromwater during construction, specifically, will the stormwater vault float? Mr. Coglas stated that almost every single project he's on has stormwater facilities, many of them are vaults. He's done hundreds of vaults. They look at excavation, the base, storage capacity, stability of the side slopes, and backfill. Tiffany Park is not an environment where he would be concerned with buoyancy of his vault structure. There might be a large seep at the beginning of the cut because of built up water pressure. This usually attenuates over time as the trapped water is drained. They always put a footing drain around the vault if they are concerned the groundwater seam might create excess hydrostatic pressure on the concrete walls. They aren't concerned about buoyancy here. He has done projects that do have buoyancy issues. In that case, there are many best management practices to prevent the vault from being displaced.

Ms. Rogers asked to turn back to the AES report. She asked Mr. Coglas to discuss the log reports for the test pits. Mr. Coglas stated geotechnical engineers dig test pits to evaluate soil profiles. Notes suggesting no caving or seepage are very useful because it speaks to the strength of the soil. Groundwater seepage is different from the groundwater table. In the Kent Valley, they would call any water they found the groundwater table, rather than seepage. In this case, there is a difference.

Mr. Rogers noted Mr. Neugebauer asked for additional studies. Mr. Coglas described his report and its detail of the geological hazards on site. Mr. Coglas stated there were no slopes that met the City's criteria for sensitive or protected areas. There are some local, isolated areas that may meet the 40% criteria, but as a geotechnical engineer, he looks at stability. The code specifies the boundaries. Mr. Coglas stated there are no landslide hazards or high erosion hazards on the project site.

Erosion is something to be managed. They derive the characterization of erosion from the USDA (now NRCS) soil characterization. These soil types were derived for agriculture. When working fields, it was good to know which soils had high erosion qualities. In development, the type of erosion hazard is not significant. Tiffany Park has some slight to moderate erosion areas. However, they control erosion through many different methodologies. The final product is stabilized. Erosion is managed through engineering solutions.

Mr. Coglas stated there are no seismic hazards on this property. The Seattle fault is 3.7 miles north. We live in a tectonically active environment. There might be a splay or other features under Tiffany Park, but none are known. It's important to know that the residential building code for this area is sufficient to offset seismic risk in this region. A more intense structure or development would require more studies, but low density residential development does not. There is a low seismic hazard here, according to the City.

With respect to coal mine hazards, Mr. Coglas stated they had reviewed the coal mine maps. AES also addressed this. They are outside the boundary where further study is needed for coal mine hazards.

Mr. Coglas stated there are no potential adverse environmental impacts in relation to geotechnical issues.

In response to the Examiner, Mr. Coglas stated he was hired as peer review for the AES report. He was also hired to respond to public comments. Mr. Coglas stated he disagreed with Mr. Neugebauer's conclusions the entire site is somehow going to be underwater or flooded. The groundwater is perched on glacial till that undulates and is uneven. Mr. Coglas said in these environments, based on studies and his experience, it's likely there will be some groundwater seepage when they do utility excavations or cuts/fills. This is not a site that will require dewatering or extensive pumping. The groundwater table is perched with various, isolated seams. In the Kent Valley, pulling water out would draw the whole water table down. This isn't the case here. The water table will be shallow near the wetlands. The AES report, except for the narrative, doesn't document any observed groundwater in the test pits. In exploration pit #6, they noted weak groundwater seepage below 8 feet. It was the dry season.

The Examiner asked if Mr. Neugebauer is correct in his conclusion the groundwater level is at zero elevation, would that cause a problem for construction. Mr. Coglas said that would be a problem, but that is not the case. However, if it was at zero elevation, they could manage it. The stormwater system might need to change, but it could be feasibility changed. Mr. Coglas stated the notion that the groundwater is right at the surface everywhere on the project is absurd.

Mr. McMonagle asked Mr. Coglas about the test logs in the back of the AES report. Mr. Coglas stated the pits were all test excavations, rather than borings. He agreed there were 12 test pits on the 22 acres dug on September 6, 2012. He agreed all of the pits were done on the same day (Exhibit

A7, Figure 2). Mr. Coglas stated he is a licensed civil engineer, not a licensed geologist or hydrogeologist. They have them on staff. He reviews those reports and has studied these specialties. He's familiar with the two basic groundwater environments at this site.

Mr. McMonagle referred to Page 1 of the AES report that there is a caution the report should be reviewed and revised to support a specific development proposal. Mr. Coglas stated he was retained in October 2014. He was hired to provide peer review of the AES report, prepare a site evaluation, review the plat proposal and provide feedback on community comments. Mr. McMonagle asked if Mr. Coglas had done physical investigation of the site. Mr. Coglas said he had not and was unsure of whether he would be asked to going forward. He anticipates what he would do on a follow up report which would include further review of plat plans. Mr. Coglas stated construction is done year round right now. He prepares different recommendations to deal with groundwater, depending on the season.

With respect to the vault, the physical dimension for this vault is very large, but he doesn't know exactly how big. His role is to help the contractor to install the vault and deal with any groundwater or geotechnical issues to ensure the vault is installed correctly and will function. The vault will probably be 12-18' deep. They will have 100 times more bearing capacity than is needed. There will be a soil cap. He'll look at the stability of the excavation to ensure the walls hold. Mr. Coglas showed where the stormwater vault will be located on the plat. Mr. Coglas agreed the deepest test pit was 10.5', though he's gone deeper on other projects. The shallowest test pit was 8'. He agreed the only test pit in the vicinity of the vault was Test Pit #11, to a depth of 8.5'.

Ms. Rogers asked Mr. Coglas to clarify his role in the project going forward. He stated his firm is the geotechnical engineer of record and will assume that role going forward.

Mr. Barry Talkington, of Barghausen Consulting Engineers, is the civil engineer for the project and designed the plat. Mr. Talkington spoke of the drainage release on the title. A drainage release states there is stormwater leaving a property and draining on another property. It is not an easement with an exact location. His design of the plat addressed the release by looking at upstream drainage basins around the property. The drainage release in the title is for the Ponderosa subdivision, at least a half mile from the property. It is uphill, but there is no physical way water can drain from that property on to the project property. The drainage release was executed in 1965, before much of the present development was constructed. The drainage release described the entire section (640 acres). It's just an historical remainder.

Mr. Talkington stated discharging clean stormwater into wetlands is a common practice. The drainage is discharged into the buffer to recharge the hydrology of the wetland.

With respect to street widths, the streets inside the project are narrower than in the surrounding communities, in conformance with current city code.

Mr. Talkington stated the preliminary plat process starts with city approval. The next step is preparation of full construction plans and drainage reports. Additional information will be requested from sub-consultants. They prepared a preliminary drainage report for the general storm drainage design. They will do a final, more specific drainage report next. The final drainage report is usually a fine tuning, though there may be changes that require more extensive revisions.

Mr. McMonagle asked if Barghausen Consulting is an engineering firm. Mr. McMonagle asked whether Barghausen was paid hourly from the consultant or as a contingent fee. Mr. Talkington stated it wasn't contingent.

Staff Response

Mr. Steve Lee, City of Renton Development Engineering Manager, described his position with the City and his relevant work experience and qualifications. Mr. Lee he had reviewed the project files and performed a site visit. He has experience in the Cedar River area for the last ten years. Mr. Lee responded to Mr. Neugebauer's testimony. He stated Mr. Neugebauer's points were very general. Most of the issues Mr. Neugebauer raises were dealt with well by Mr. Coglas. Mr. Lee stated the Cedar River issues will always be present. The river system is young and new. There have been sloughing issues, but they were caused by deforestation in the early 20th century, earthquakes and other acts of nature. The Cedar River is now controlled by the US Army Corp of Engineers (ACOE). There is a bit of control in the form of two upstream dams. Seattle Public Utilities (SPU) has the capability of metering the flow of the Cedar River. Within the last five years, there was an 80 year event of 10,000cfs. In the past, that would have causes landslides and flooding at Boeing. That didn't occur because of the controls in place by the ACOE and SPU.

Mr. Lee stated Mr. Coglas has performed at least 20 projects in the City of Renton. He is correct in his review of the geotechnical study by AES. The site is very similar to other sites in the city. The steep areas are very small (15-20' feet long) and do not warrant slope stability analysis. Overall on the project site, the approximate slope is 10% or so. The City does not require additional slope stability analysis.

With respect to the number of test pits in the AES study, Mr. Lee stated there were sufficient numbers of test pits to gauge impacts of potential groundwater on site. He would have preferred to see a few more, especially in the vault area. However, as Mr. Coglas testified, the City may require extra analysis. He stated he does not typically require additional geotechnical analysis at this stage of the process. They may ask for deeper borings or excavation pits. The residential nature of this proposal wouldn't usually require it. They will look at this again to determine if more geotechnical information is needed for the walls, cuts, grading and the stromwater vault. Mr. Lee felt the information provided was adequate to allow for a determination of impact on the site. The AES didn't mention issues of groundwater on the site. Therefore, they didn't feel the need to require secondary review. The City determined the AES report was adequate.

Mr. Lee spoke to the stormwater drainage issues. The only concern the City may have is the placement of the vault. They may require additional and deeper test pits to determine if there is groundwater that would have a detrimental effect on the vault structure. In that instance, they will do a buoyancy calculation to determine the static water volume. A certain amount of water will hold the vault down. They need to know how much water that is and when it will be in the vault.

In response to Ms. Timmons, Mr. Lee stated the storm drainage water will be pre-treated and will prevent polluted water from running off into the wetlands. The vault will treat all PGIS run off and discharge to a closed conveyance system. None of the pollution generating systems will discharge into a wetland.

Mr. Lee stated the City of Renton will require a Level 2 downstream analysis to describe the downstream conveyance after leaving the site. They are uncertain of a segment of the pipeline that takes the water. They want to make sure there is no downstream flooding. An NPDES permit will be required for the project. The permit stipulates allowable discharge into a conveyance system. That will include background monitoring as well as discharge monitoring. All of the requirements must be met before a building permit or construction permits are issued.

Mr. Lee summarized the local, state and federal code requirements. The applicant has complied with all code requirements. He stated these codes are sufficient to address all probable stormwater impacts. He said the Seattle pipeline is monitored by SPU. If they see even a fraction of a movement in that hillside, they'll know. This is the drinking water in the City of Seattle.

In response to the Examiner, Mr. Lee stated the deep, static groundwater level was uniformly along the wetland level at the project, it could affect the development. They would discover this instance during construction. If grades are lower than the wetland level, they will require more borings and test pits. The Examiner asked if the code regulations would allow the City to ask for more borings. Mr. Lee stated it comes down to professional liability as defined in the RCW. The person stamping the plans is responsible. The City is responsible for life safety only. The engineering staff can require more borings if they think there might be an issue. If there are groundwater issues present, the proposed vault is the best solution.

In response to Ms. Rogers, Mr. Lee stated there is a difference between the perched groundwater table and the static, deeper groundwater level. There are no indications of the static groundwater level above 8'. Mr. Lee agreed with Mr. Coglas' assertion that the surface groundwater could be addressed during construction.

Mr. McMonagle asked if Mr. Lee was aware the geotechnical report was prepared for the school district rather than the applicant. Mr. Lee stated he was. Mr. McMonagle asked if there shouldn't have been at least one test pit per acre. Mr. Lee stated the geotechnical engineering consultant will get a representative sampling of the site. They add more bores if they see dissimilarities in the site. Mr. McMonagle asked if Mr. Lee was aware AES limited its number of test pits based on budgetary

constraints. Mr. Lee stated he was not aware of this. With respect to the stormwater, Mr. Lee stated the initial design was for a pond but changed to a vault sometime this year. Mr. McMonagle asked if the vault addition would typically trigger the need for additional review. Mr. Lee stated they would typically ask for more information but they haven't yet requested more geotechnical information from the applicant.

Ms. Timmons asked if the City can get the extra information in an engineering packet. Mr. Lee stated it could.

Ms. Rocale Timmons stated the studies provided by the applicant; especially the technical studies will be fine-tuned in detail at the time of construction permit submittal. These studies are used to determine if there are probably adverse impacts from the development. The appellant has asserted there hasn't been adequate time to review the proposal and the attendant studies. This project has been in review for nine months. The file has been available. The appellant has been provided with these studies, including the revised studies from June 2013. There were two Notices of Application released. Ms. Timmons entered Exhibit AK. The September 2014 notice included the revised SEPA checklist.

With respect to wetlands, the City asked for a third party study. That study was completed by Otak. Otak provided two separate memos in response to revised studies from Mr. Schultz. Otak affirmed the final wetland determination (Exhibit A5). Otak determined there was a wetland missed by the applicant. The studies were revised to acknowledge the fifth wetland on-site. Otak then affirmed all of the revisions made by Mr. Schultz. Staff agrees with the TPWAG appellant regarding tree preservation for wildlife on site.

With respect to transportation, staff agrees with testimony provided by Mr. Jones of Transpo Group. Perteet, the City's consultant, concurred with the Transpo study. They feel all potential impacts are mitigated.

Staff agrees with the testimony provided by Ms. Villa with respect to critical areas and buffers.

Applicant Rebuttal

Ms. Rogers stated the applicant agrees with staff on every issue with the exception of the requirement of a 15 foot buffer.

Appellant Rebuttal

Mr. Neugebauer stated he was concerned about the stormwater vault filter. There are no specifications on this. He has never seen a filter that can remove dissolved metals. He is concerned about the maintenance of the filter. Who will change it or maintain it?

Mr. Neugebauer said he's been practicing hydrogeology for 33 years. He stated perched groundwater doesn't occur on slopes. The water drains through. The groundwater follows the contour of the land. He stated the unsaturated zone flow is at negative pressure. Groundwater is at atmospheric pressure. The applicant is describing an impossible scenario. They can see the groundwater through pressure gradients. He stated the water table at an elevation is a water table. He stated they are using the applicant's information which is incomplete. The groundwater will go with the slope of the ground. Either the water's at the surface and there is a wetland or it's not. In the upper 30", the bioturbation zone, the ground is unsaturated. The water flows through the pore space and creates a vacuum behind it. There is just not enough information to really say where the groundwater is and where it's going.

Finally, Mr. Neugebauer stated groundwater is regulated under the Clean Water Act. Point sources cannot be wetland hydrology.

Preliminary Plat

Staff Testimony

Ms. Rocale Timmons gave a PowerPoint presentation (Exhibit AL). The site is located in the Benson Hill community planning area in the Tiffany Park neighborhood. It is 22 acres located in the R8 zone. It is bordered by the Cedar River Pipeline and the Mercer Island Pipeline. There are 1,300 trees on this vacant site. It is owned by the Renton School District. It is surrounded by existing single family residences. It ties into two existing street stubs which will be extended into the site.

The applicant is requesting critical areas exemptions and preliminary plat approval. The City has received 72 comment letters. Staff was present at a community meeting held by TPWAG and conducted a separate meeting in September 2014. On September 22, the Environmental Review Committee (ERC) issued a MDNS decision with 11 mitigation measures. Two appeals were filed. The environmental determination did not include new issues related to zoning, permitted uses, density, construction mitigation, and others.

The applicant is proposing 97 lots. There is a 96 lot proposal to allow 30% retention of trees. There will be a 5.7 du/acre density. Average lot size is 5,400sf. The site has five wetlands (three Category II and two Category III). The applicant is proposing buffer reductions with mitigation in the form of buffer extensions. The applicant is asking for a critical areas exemption for the extension of SE 18th Street to allow for a small buffer impact. Staff supports the requested exemption.

Staff relied heavily on the Comprehensive Plan. There are many significant trees, critical areas, wildlife and an established density and use pattern that are unique. Ms. Timmons described the Comprehensive Plan policies the staff relied on in their analysis. The staff attempted to provide harmony and balance between existing and new neighborhoods. The proposal complies with the Comprehensive Plan as conditioned.

The proposal meets most bulk and dimensional standards if all conditions of approval are met. The only issue is Lot 19. This lot may not meet minimum lot width standards, but will be conditioned to meet the standard.

The applicant has provided a landscape plan. This plan does not comply with the code, but could with minor modifications.

Per the development standards, there are several proposed walls ranging from 4' to 21' on-site. These walls are outside the height limit. Staff has requested a height limit on walls. Staff would be open to terracing of walls to reduce the overall height.

With respect to critical areas, most requirements are met with conditions. The applicant has asked for modifications to wetland buffers. There are impacts from walls that must be revised.

There were public comments related to habitat. The site provides habitat for non-listed species. The tree preservation plan is sufficient to provide habitat. Based on the provided tree inventory, approximately 679 trees were excluded from retention calculations. At least 188 trees must be preserved on site or replaced at a mitigation ratio to allow 30% tree retention. The applicant proposes to protect 181 trees and mitigate seven others.

In terms of the analysis from subdivision regulations, the proposal complies if all conditions of approval are met. The applicant must provide a safe crossing for the trail.

In response to the Examiner, Ms. Timmons stated there is no applicable street plan in the area. There were several comments regarding transportation issues. The proposed development would generate 1,000 weekday trips. Intersections near the project would remain at acceptable levels of service. A SEPA mitigation measure requires a new stop sign at Monroe Avenue. Staff has included an additional condition of approval to address sight distance concerns. Staff has also recommended additional signage. Staff feels as conditioned, all impacts for transportation are mitigated.

With respect to residential lots, there are several pipe stem lots. Staff would like to see the applicant revise these lots to comply with code or provide for shared driveways. Shared driveways are preferred to reduce curb cuts.

Parks, police and fire staff indicate there are sufficient resources to support the development if all fees are paid. Adequate provisions for safe walking conditions for students are provided. Sidewalks will be constructed to connect to the existing sidewalk system. Staff has recommended a SEPA mitigation measure to include a crosswalk improvement at Lake Youngs Way at SE 18th Street.

Adequate provision for water and sewer are provided. The drainage report complies with the 2009 Stormwater Manual. There will be a vault within Tract A. The applicant will need to provide a downstream analysis for stormwater conveyance.

In response to the Examiner, Ms. Timmons stated there will be no alley access. This proposal does not meet the threshold. There are two zones on the property.

Applicant Testimony

Ms. Rogers presented a letter describing the applicant's rationale for revised conditions of approval along with a set of revised conditions for the plat (Exhibits AM and AN, respectively). Ms. Rogers asked for approval of the plat subject to revised conditions. They are generally supportive of the staff report. They have a few areas of disagreement. Ms. Rogers wanted to emphasize a point that the client is under contract to purchase the project from the Renton School District. This is surplus land the district cannot use.

Ms. Rogers noted they are asking for revisions to Conditions 4, 5, 6, 9, and 16-18. They are requesting additional changes to conditions to fix typographical errors, repetition, and non-contested issues. The City has recently changed its justification for Condition 3 for the 15 foot buffer. The City had originally erroneously relied on incorrect Comprehensive Plan policies. They are now turning to policies that also don't support the need for a buffer. Aesthetics are not an adequate basis to impose a perimeter buffer. There is already an average 50 foot perimeter buffer proposed along with two pipelines. There is no need for an additional buffer.

With respect to Condition 4, they have proposed a modification to the location of curb bulb outs. They feel the City will agree with this revision.

Condition 5 is the biggest issue. This is the condition that City is asserting that retaining walls must be limited to 4 feet in the front yard and 6 feet in the back yard. The City is referencing a condition related to aesthetic dividers, not retaining walls. None of the retaining walls concepts are referenced in this condition. Even if this particular code were to apply, the measurement of height does not apply. The walls they have designed are essential to the design of the plat. Exhibit AM, Attachment B, are two staff reports for current amendments to the walls and hedges section of the code. Title 4 does not have standards for retaining walls. Exhibit AM, Attachment C is a city handout that establishes a difference between fences, hedges and walls and engineered retaining walls. Exhibit AM, Attachment D is the pre-application memo for the original meeting Henley had with the City. You never get a written report again until you see the Hearing Examiner. The City stated the proposed retaining walls are not subject to the fences portion of the code. Even if the code has recently changed, they are vested to the old code. If the retaining walls are reduced or eliminated, we'll end up doing more grading. That will result in impact to trees and increased construction impacts. They have submitted a grading plan with reduced retaining wall heights.

Conditions 6 and 16 are about shared private driveways. They are concerned the City is demanding an extra lot use the shared private driveways. There is a specific instance when this will not work.

Condition 9 is the wetland mitigation associated with Wetland E, at the southeast section of the site. The wetland mitigation plans show they have already exceeded the required buffer. They have to extend the street. The critical areas exemption is for 14sf of impact from the required sidewalk. The City has asked for additional buffer area. They disagree but will agree to provide enhanced plantings.

Condition 17 is a typographical error.

Condition 18 is related to pipe stem lots which are really about the shared driveway issue.

Mr. Gary Schultz, the wetland ecologist, described the mitigation impacts the applicant is providing. His testimony is specifically related to Condition 9. Mr. Schultz described the 1,331sf of additional buffer the applicant is proposing.

Ms. Rogers stated Ms. Timmons agreed to the revised Conditions 1, 4, 9, 13 and 17. Ms. Timmons stated they disagree with applicant revised Conditions 3, 5, 6, and 16. In response to the Examiner, Ms. Vanessa Dolby, stated she would not be opposed to changing Condition 5 to allow them to request a variance. She could not comment on whether staff would support a variance. These would be administrative variances. Ms. Rogers stated that they did not apply for a variance because they were told they didn't need to.

Mr. Barry Talkington spoke to the difference between cut and fill walls. A cut is needed when the finished lot grade is below the existing grade. The wall stabilizes the grade. A fill wall includes fill on top of existing grade. The finished lot is above existing grade. This is and engineered wall with reinforcing fabric. Mr. Talkington stated the revised plan reduces the 21' high wall above Tract A and the 18' high wall along the Cedar River Pipeline. That wall will come down to 6'. The height from the high side of the walls is zero if they apply the code in effect when they submitted. In their case, the finished grade is the top of the wall.

Mr. Talkington described the limits on site grading imposed by two entrances, ADA standards, etc. The overall objective is to balance cut/fill on site. They are limited by the road access and ADA standards for road slopes through intersections. They can only change grades on site so much. As the plan is laid out there are grade differences from lot to lot that requires walls. They attempt to maximize lot areas and reduce impacts to surrounding buffers. If they meet the City's conditions, they will lose lots, reduce lot sizes and impact the buffers. Use of walls allows them to decrease impacts.

For Conditions 6 and 16, Mr. Talkington spoke to a set of maps (Exhibit AO) depicting the shared driveway plans. He prepared the plans. For lots 9-14, the shared driveway easement will be used Lots 12-14. Lot 14 has direct access to the cul-de-sac but there will be no driveway there. The City would also require Lot 11 to use this driveway. This is not desirable because the driveway would be at an angle to the roadway which would also change the design of the house to allow side loading of

the garage. The City is attempting to apply the amended code to the plot rather than the code under which the project vested. The staff Report stated Lot 14 had inadequate frontage. This has been corrected.

For Lots 15-17, they had originally designed the shared driveway to service Lots 15 and 16. They have now included Lot 17 on the shared easement. They have also corrected the frontage of Lot 17 to comply with code. Next to Lots 15-17, there is a pedestrian tract.

For Lots 38-40, the issue is the same as for Lots 15-17. They have revised the lots to allow Lot 38 to comply with the width requirement and access the shared easement.

For Lots 79-81, Lot 81 was added to allow access to the shared right of way. Lot 78 will not access the shared driveway.

With the applicant's revised condition language, they are willing to ensure access to shared driveways for three lots rather than the City's suggested four.

Public Testimony

Ms. Jill Jones is a Renton resident. She's heard experts testifying and noted that many of these people testifying have not walked the roads. She has lived there and walked therefor years. This is a valuable resource. The Cedar River corridor cannot be walked by residents. There is no access here because it is steep. The woods are fully canopied, with easy trails. Henley says because the development is single family residences, they shouldn't have to provide a buffer. The development is much denser than the existing neighborhoods. The trees are mature and were pre-existing 30 years ago. The road is wide. There are many trees. Grass planting strips absorb the rain. Ms. Jones showed an example of other Henley developments that have no trees and narrow parking strips. The homes will be taller and larger than the existing houses on much smaller lots. There will be no stormwater areas. Currently Tiffany Park floods in heavy storms. She has serious doubts about the ability to provide adequate stormwater drainage. She also observed a pileated woodpecker in the woods on April 14, 2014.

Ms. Beedon would like to ask the Examiner to walk the woods before he makes a decision. This is important. She has listened to all of the testimony. The experts seem to care but they have shown no concern about what they are tearing down. This piece of wood should be preserved. They are taking away something irreplaceable. She feels this piece of property should be preserved for future generations and all of us. She asked the Examiner to walk this area. Also, she has observed pileated woodpecker nests in these woods. They don't migrate. This is not about not wanting development. This is about preserving a precious piece of woods. She wouldn't care if they built a prison there is it was cleared. This is about nature and the trees. She can't imagine all these trees being torn down. If the citizens hadn't become active, the forest would be clear cut. They have a right as citizens to be heard and care about the environment.

Ms. Barbara Smith stated she didn't realize she needed to submit the reviews for Henley Homes (Exhibit AQ). Ms. Rogers noted they were not a comprehensive review.

Staff Rebuttal

Ms. Timmons stated for the driveway portion of the code, please review RMC 4-4-080. This code allows discretionary authority in the code to limit the number of driveways accessing the street. staff does not agree with the proposed revisions to Conditions 6 and 16. They want to see Lots 11 and 78 to access abutting shared driveways.

ATTACHMENT B

The Reserve at Tiffany Park Preliminary Plat and SEPA Appeals
(LUA13-001572, ECF, PP, CAE)

EXHIBITS ADMITTED DURING HEARING

SEPA Appeal Exhibits

Exhibit A: City of Renton Environmental Analysis (Attachments 1-18 are listed as Preliminary Plat Exhibits 1-18 below)
Exhibit B: Environmental (SEPA) Determination of Non-Significance Mitigated (Preliminary Plat Exhibit 22 below)
Exhibit C: Environmental Checklist (June 10, 2014)
Exhibit D: Comprehensive Plan (Land Use, Transportation and Community Design Elements)
Exhibit E: Acceptance and Notice of Application Affidavit Service by Mailing (November 24, 2014)
Exhibit F: Notice of Application and Off Hold Notice Affidavit Service by Mailing (July 25, 2014)
Exhibit G: Commitment for Title Insurance
Exhibit H: TPWAG Letter to Renton School District (September 10, 2014)
Exhibit I: Renton School District Letter of Denial to TPWAG (September 16, 2014)
Exhibit J: Henley Appeal
Exhibit K: Henley SEPA Appeal Exhibits

1. a. HEX Staff Recommendation Report
   b. Pre-Application Notes
   c. Wetland Determination (October 30, 2013)
   d. Wetland Determination (February 28, 2014)
2. Letter Report from Ray Coglas
3. RSD Resolution No. 0312/13
4. SPU Letter (November 4, 2014)
5. Drainage Release
6. Site Maps and Aerial Photos
7. Airsoft Guns Documentation
8. Revised Plans, Alternate Layouts
9. COR COW Meeting (September 9, 2013)
10. Area Water Well Logs
11. Legal Analysis and Argument (November 18, 2014)
12. Soundview Consultants Letter, Racheal Villa
13. Grete Associates Report, 2008

Exhibit L: TPWAG Appeal
Exhibit M: TWPAG SEPA Appeal Exhibits

19. TIR Report (November 12, 2013)

21. TIA Report (November 2013)
23. Tree Protection Report (November 13, 2013)
24. SEPA Checklist (November 13, 2013)
39. Miscellaneous Photographs of Surrounding Site
40. Professional Qualifications – Steven Neugebauer
41. Neugebauer Expert Report (November 17, 2014)
47. Pre-Hearing Statement regarding Prescriptive Easement (November 18, 2014)
48. TPWAG Correspondence with Renton School District

Exhibit N: Staff Appeal Analysis (November 18, 2014)
Exhibit O: Henley Pre-Hearing Order Request
Exhibit P: Hearing Examiner Order Requesting Reply to Pre-Hearing Order Request
Exhibit Q: TPWAG Response to Pre-Hearing Order Request
Exhibit R: City Response to Pre-Hearing Order Request
Exhibit S: Henley Response to Pre-Hearing Order Request
Exhibit T: Pre-Hearing Order
Exhibit U: McMonagle Notice of Appearance
Exhibit V: Flatley Resume
Exhibit X: Lee Resume
Exhibit Y: Declaration of Timmons
Exhibit Z: *Not Used*
Exhibit AA: Renton Reporter Article (Donnelly)
Exhibit AB: Letter to Editor (Donnelly)
Exhibit AC: 5 Photographs (Donnelly)
Exhibit AD: TPWAG Memo on HEX Authority and *Halverson v. Bellevue* (November 28, 2014)
Exhibit AE: City of Renton Response to TPWAG Memo of 11/28/14 (December 5, 2014)
Exhibit AF: Henley Response to TPWAG Memo of 11/28/14 (December 5, 2014)
Exhibit AG: Hearing Examiner Ruling on Examiner Authority and *Halverson v. Bellevue* (December 7, 2014)
Exhibit AH: Title Report/Chain of Title (TPWAG)
Exhibit AI: Roenicke TPWAG Summary Testimony
Exhibit AJ: Garlough TPWAG Summary Testimony
Exhibit AK: Timeline

Preliminary Plat Exhibits

Exhibit 1: HEX Report
Exhibit 2: Preliminary Plat Plan (July 16, 2014)
Exhibit 3: Tree Cutting and Land Clearing Plan (July 16, 2014)
Exhibit 4: Tree Protection Report (June 6, 2014)
Exhibit 5: Revised Wetland Determination and Response Letter (June 3, 2014)
Exhibit 6: Habitat Assessment (January 16, 2014)
Exhibit 7: Geotechnical Report (September 28, 2012)
Exhibit 8: Drainage Report (February 24, 2014)
Exhibit 9: Traffic Impact Analysis (April 23, 2014)

Exhibit 10:	Public Comment Letters: 10.1-10.70
Exhibit 11:	Alternative Tree Cutting and Land Clearing Plan (August 29, 2014)
Exhibit 12:	Alternative Tree Protection Report (August 27, 2014)
Exhibit 13:	Independent Secondary Review - Traffic
Exhibit 14:	Independent Secondary Review – Wetland (April 3, 2014)
Exhibit 15:	Supplemental Independent Secondary Review – Wetland (July 9, 2014)
Exhibit 16:	Habitat Assessment Technical Memorandum (February 11, 2014)
Exhibit 17:	Habitat Assessment Technical Memorandum (June 12, 2014)
Exhibit 18:	Landscape Plan (July 16, 2014)
Exhibit 19:	Transportation Concurrency Approval
Exhibit 20:	Renton Trails and Bikeways Map
Exhibit 21:	Environment Review Committee (ERC) Staff report
Exhibit 22:	SEPA Determination and Mitigation Measures (September 22, 2014)
Exhibit 23:	Public Meeting Notice
Exhibit 24:	Notice of Application Affidavits
Exhibit AL:	Staff PowerPoint Presentation
Exhibit AM:	Applicant Letter of Revised Plat Conditions (December 8, 2014)
Exhibit AO:	Shared Driveway
Exhibit AP:	Jones, Photographs
Exhibit AQ:	Henley Homes Reviews from Internet

BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON

RE: The Reserve at Tiffany Park Preliminary Plat **Preliminary Plat and SEPA Appeals** **LUA13-001572, ECF, PP, CAE**	**RULING ON RECONSIDERATION REQUESTS**

Summary

The Final Decision issued on January 8, 2015 is left largely unchanged as a result of reconsideration requests filed by the SEPA Appellants and the applicant. The changes authorized by this decision will be implemented in a REVISED FINAL DECISION UPON RECONSIDERATION, issued on the same date as this accompanying ruling. The applicant's reconsideration request was originally filed as a Request for Clarification and all of the applicant's requests were granted as they just helped clarify the intent of the Final Decision. The SEPA Appellants requested substantive changes and most of those requests were denied. Since the applicant denied access to the SEPA Appellants to conduct wetland studies at the project site, the SEPA Appellants were authorized to admit additional wetland evidence during the reconsideration process. However, this new evidence merely proved cumulative and was not sufficient to overcome the findings made by Otak, the independent third party reviewer of the applicant's wetland determinations. A condition will be added requiring

Attachment "C"

compliance with stormwater regulations that pertain to roof run off. Although compliance with these requirements is already required during engineering review for final plat approval, the requirements are called out in the conditions of approval to ensure that engineering staff makes a priority of ensuring that stormwater wetland impacts are addressed as contemplated in the City's stormwater regulations.

Background

This ruling responds to two reconsideration requests. The SEPA Appellants requested reconsideration of the Hearing Examiner's decision on the above-captioned matter by letter dated January 21, 2015. An Order on Request for Reconsideration was issued in response on January 22, 2015 directing the SEPA Appellants to limit the new evidence of their request for reconsideration to that authorized by the Renton Municipal Code. The SEPA Appellants submitted a modified request for reconsideration on January 28, 2015 within the time frame required by the January 22, 2015 order. Since the SEPA Appellant's first request for reconsideration, the applicant has also submitted a timely request for reconsideration dated January 22, 2015. The applicant's request for reconsideration replaced an earlier request for clarification. An Order on Request for Reconsideration II was issued on January 29, 2015. The final reply deadline was set for February 10, 2015. This deadline was extended to February 11, 2015 by email order dated February 4, 2015.

Evidence/Argument Relied Upon

R-1 Administrative Record established at the close of the hearing on December 8, 2014.

R-2 Henley Request for Reconsideration dated January 22, 2015.

R-3 SEPA Appellant Request for Reconsideration dated January 28, 2015 in addition to pictures of wetlands taken on January 16, 2015 as included in the SEPA Appellant January 22, 2015 request for reconsideration.

R-4 Henley February 4, 2015 Response to Request for Reconsideration

R-5 City February 5, 2015 Response to Request for Reconsideration

R-6 SEPA Appellant Reply dated February 9, 2015

R-7 Henley Reply dated February 9, 2015.

R-8 Order on Request for Reconsideration dated January 22, 2015.

R-9 Order on Request for Reconsideration II dated January 29, 2015.

Henley Request for Reconsideration

The Henley request for reconsideration was originally submitted as a request for clarification and was largely uncontested. The requests are addressed individually below using the numbering system of Ex. 2 as follows:

1. P. 28, line 9 should read "10 foot wide perimeter landscaping requirement" instead of "15 foot wide perimeter landscaping requirement". The revised MDNS condition imposed by the Final Decision imposes a 10-foot perimeter landscaping requirement and this supersedes any conflicting background language in the decision.

2. The applicant asserts that the reference to the "10 foot wide on-site landscaping strip for all lots" in MDNS Condition No. 6 is too ambiguous. This quoted language was taken from recommended Condition No. 3 of the staff report, which also combined the on-site landscaping strip with perimeter landscaping requirements and also provided no further clarification on the location of he "on-site landscaping strip". The applicant made no further effort to clarify the language when it requested revision to Condition No. 3 in its December 8, 2014 request for revised conditions, Ex. AM. Now the applicant asserts and the City has no objection to the assertion that the language is ambiguous. MDNS Condition No. 6 will be clarified to note that the "on-site landscaping strip" is the frontage landscaping required by RMC 4-4-070(F)(1).

3. Specific lot references in MDNS Condition No. 6 will be removed. MDNS Condition No. 6 will read as follows:

   The applicant shall revise its landscaping plan to provide for a 10 foot wide on-site street frontage landscape strip as required by RMC 4-4-070(F)(1) for all lots and a 10 foot wide, site obscuring perimeter landscaping adjacent to areas where the retaining walls are four or more feet in height. Landscaping at maturity must exceed the height of the adjacent retaining wall. The final detailed landscape plan shall be submitted to and approved by the Current Planning Project Manager prior to construction permit approval. Such landscaping shall include a mixture of trees, shrubs, and groundcover as approved by the Department of Community and Economic Development.

4. Conclusion of Law No. 3(E) of the Final Decision shall be renumbered as Conclusion of Law No. 7.5.

5. Condition of Approval No. 3 is deleted.

SEPA Appellant Request for Reconsideration

The SEPA Appellants' request for reconsideration is addressed by topic below, following the order presented by the SEPA Appellants in their request for reconsideration, Ex. 3:

1. Wetland New Evidence. The SEPA Appellants request admission of photographs taken January 16, 2015. In their reply, Ex. 6, the SEPA Appellants also present evidence regarding climatic conditions taken from Weatherspeak. The evidence is admitted because the SEPA Appellants were denied an opportunity to do their own wetland assessment on the subject property.

The evidence presented by the SEPA Appellants would not normally be admitted due to the strict prohibition on admission of new evidence as outlined in the Examiner's January 22, 2015 Order on Reconsideration. Although of course the appellants could not have photographed the flooded conditions present on January 16, 2015 prior to the close of the hearing, the type of evidence supporting their claim (e.g. that the time of the wetland delineation was during an unusually dry period, etc.) could have been made from other sources, such as eyewitness testimony and soil samples. RMC 4-8-100(G)(9) does allow for the introduction of new evidence that was not reasonably available during the hearing, but this provision needs to be strictly construed to be consistent with the "one hearing" objectives of the Regulatory Reform Act as discussed in the Order on Reconsideration. If RMC 4-8-100(G)(9) is interpreted as authorizing a hearing participant to augment the record any time they find a new piece of corroborating evidence to support their case, the reconsideration process simply becomes a "do-over" opportunity for hearing participants to fill in gaps in their case they should have covered the first time around. New evidence should only be admitted if there was no other evidence available to the hearing party that could have equally proven their point.

In this case, the SEPA Appellants weren't otherwise given a reasonable opportunity to argue that the conditions taken during the wetland delineation conducted by the applicant were unusually dry and may have lead to inaccurate results. Since delineations are largely based upon soil and vegetation samples and observations, the SEPA Appellants most effective way to prove their point would have been to do their own wetland delineation. However, the applicant denied the SEPA Appellants property access to conduct such a delineation. For this reason, the SEPA Appellants should be granted substantial flexibility in presenting evidence on the presence and location of wetlands. Through the actions of the applicant, the SEPA Appellants have been forced to rely upon secondary evidence to support their position. If this type of evidence arises for the first time during the reconsideration period, it is fair to let them use it. The Weatherspeak evidence presented in the reply was available during the hearing, but it was used as rebuttal to points raised by the applicant during reconsideration argument. Given the flexibility due the SEPA Appellants on wetland evidence, the Weatherspeak evidence is also admitted.

2. Wetland Delineations. Wetland boundaries were accurately delineated. The new evidence presented by the SEPA appellants (January 16, 2015 photographs, Ex. 3) shows that standing water extended beyond the wetland boundaries staked by the applicant on January 16, 2015. The SEPA Appellants also provided evidence in Ex. 6 that the conditions existing when the applicant's wetland delineations were conducted were exceptionally dry. This evidence and the other arguments and evidence presented by the SEPA Appellants during the hearing in chief is not sufficient to overcome the expert opinions and delineation work performed by the applicant and the independent third party experts (Otak) that reviewed the work. The SEPA Appellants do raise valid points, but the fieldwork done by the applicant's expert was verified by the third party experts (Otak) on March 17, 2014, an exceptionally rainy month. As noted in p. 2 of Ex. 14, one of the Otak reports:

> *Please note that the wetland delineation was performed in June 2013, whereas the rainfall amount as of March 17, 2014, was approximately 5.58 inches above the normal amount for March (National Weather Service); ...*

In the Ex. 14 report Otak further identified that during their March 17, 2014 site visit that standing water extended from a depth of several inches to 1.5 feet deep beyond delineated wetland boundaries. Despite these findings and conducting its visit in an exceptionally wet spring month, Otak still concluded that the delineations were accurate. As noted in the applicant's reconsideration response, Ex. 4, a wetland delineation is not based exclusively on the presence of water, but rather is based upon several factors including hydrology, soils and vegetation. The issues raised by the SEPA Appellants certainly puts the conclusions of the applicant's expert into question, but those concerns are put to rest by Otak's third party review. There is no reason to doubt the objectivity or competency of Otak's review and for that reason it proves determinative on the wetland issues.

3. Buffer Averaging. The SEPA Appellants identify areas where the project encroaches into wetland buffers. The SEPA Appellants do not dispute that these encroachments were authorized as part of the applicant's buffer averaging and they do not identify how the buffer averaging plan fails to meet applicable City buffer averaging standards. Absent any evidence to the contrary, it cannot be concluded that the averaging plan found to be code compliant by third party reviewer Otak and City Staff fails to meet City standards.

4. Trees. The SEPA Appellants assert that a ten-foot wide buffer in front of retaining walls would not be sufficient to obscure the walls from view. No evidence is referenced or explanation proffered as to why the buffer would be insufficient. The final decision on this matter contained a detailed review of the evidence on the sufficiency of the buffer width and the SEPA Appellants did not identify any error in this analysis. The ten foot wide buffer is still found to be sufficient.

5. Stormwater. The SEPA appellants assert that the removal of trees will reduce 75% of the property's ability to process storm water and that a 24" discharge pipe as proposed by the appellant is inadequate to handle stormwater. It is determined that the City's stormwater regulations provide for adequate stormwater mitigation.

The City of Renton has adopted the 2009 King County Surface Water Design Manual under RMC 4-6-030(C). This manual requires that stormwater runoff rates and volumes match pre-development, forested conditions. In short, the City's stormwater regulations already require stormwater systems to be designed to take into account the impact of tree removal and are also designed to assure that all stormwater facilities, including pipes, have adequate capacity to handle stormwater run-off. The applicant has prepared a preliminary set of calculations in its Technical Information Report, Ex. A, att. 8, which addresses the reduction in natural stormwater retention occasioned by the loss of trees. The SEPA appellants have not identified any deficiencies in these calculations or the regulations that require them. Condition No. 2 of the MDNS also requires a Level 2 downstream analysis, which will verify the adequacy of pipe sizes. In the absence of any evidence to the contrary, the City's stormwater regulations are determinative on the adequacy of stormwater mitigation. Further, in the absence of any evidence to the contrary on the applicant's compliance with those stormwater regulations, City engineering staff's finding of adequacy on the preliminary calculation is also determinative.

6. Roof Runoff. The SEPA Appellants assert that the proposed diversion of rooftop run off into wetlands violates City stormwater regulations. The Appellants also assert that roof top run off will mix with pollutants in yards and then flow into wetlands. The applicant responds that the roof top runoff is proposed to be diverted away from polluting surfaces so that no mixing will occur. The applicant also asserts that compliance with stormwater manual requirements will be achieved during final engineering review.

City engineering staff have determined that the proposal's proposed stormwater system will comply with applicable stormwater regulations as conceptually proposed for preliminary plat review. The SEPA appellants have not specifically identified how any part of the proposed system would fail to comply with stormwater regulations as they apply to roof runoff and its interaction with wetlands. Under these circumstances it would be appropriate to assign remaining compliance issues to engineering stage final plat review, as contemplated in the City's subdivision review regulations. However, to remove any doubt, a condition of approval will require that (1) roof run-off that impacts wetlands will not be allowed to mix with any polluting surfaces; (2) Category 2 wetlands may not be structurally or hydrologically engineered for runoff quantity or quality control as required by KCSWDM Reference 5; and (3) City staff shall require design adjustments as authorized by KCSWDM 1.2 to the extent necessary to ensure that wetland hydrology is not adversely affected by the proposal.

5. Traffic. The SEPA Appellants assert that the conversion of SE 18th St. and 124th Place SE from cul de sacs to throughways to serve the project is not sufficiently mitigated and will reduce their property values by $30,000. The reduction in property values is new evidence that cannot be considered during reconsideration since that information was reasonably available to the SEPA Appellants during the hearing in chief. The SEPA Appellants also make several suggestions for revising access routes to the project site. It is too late to consider these types of suggestions after the close of the hearing. Any change to access would require a re-evaluation of traffic impacts, which could take substantial investigation and study by both the applicant and staff. Since the record is closed, the opportunity for that type of analysis is gone. If any of the suggestions were made prior to

the close of the hearing, the SEPA appellants should have identified where in the record the suggestion was made and why the staff and applicant response were deficient. In the absence of that type of information, the SEPA Appellant requests for revision cannot be considered.

DATED this 26th day of February, 2015.

Phil A. Olbrechts

City of Renton Hearing Examiner